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The new Cinema Communication

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The New Cinema Communication: All's Well that Ends Well?

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The new Cinema Communication

Foreword

*A mark, a yen, a buck, or a pound
A buck or a pound
A buck or a pound
Is all that makes the world go around,
That clinking clanking sound
Can make the world go 'round.
"Money Money" (from Cabaret, lyrics by Fred Ebb)*

Younger generations nowadays take the existence of the European Union for granted. Today's European adolescents were born into the European Union, so to speak, but it is a very recent development if we take into consideration the history of Europe as a whole. It is an organisation that was not created overnight, not even in seven days, but one that evolved gradually. Some would argue that the EU is still an unfulfilled dream, but despite this much has been achieved since its creation. Among the many advantages that citizens of an EU member state enjoy, the fundamental freedoms enshrined in the EU treaties allow them to move around, do business and live in other EU countries.

The younger generations may not remember, for instance, that there was a time not so long ago when each European country had a different currency. Now more than 300 million Europeans share the Euro and can move freely inside the Eurozone without need to change money at the border or the airport.

Of course, the fact that circulation inside the EU is significantly easier than in the past does not *oblige* EU citizens to benefit from this freedom. Something similar could be said about the circulation of European films inside the EU. If certain films benefit from EU rules on the free circulation of goods and services and are successful in going beyond their national borders, it is an exception rather than the rule. There are surely different explanations for this phenomenon. According to the Commission, it results from the fragmentation of the European audiovisual sector into national or even regional markets. Another reason for this could be the absence of a common language in the EU. Paraphrasing Nelson Mandela, you can only reach a person's heart if you talk to him or her in his/her own language.

The EU has changed many things, but one thing that remains unshaken is that money still makes the (cinema) world go round. And in Europe "that clinking clanking sound" comes partly from the public coffers. The European Commission, as guardian of the EU treaties and defender of the general interest, has the duty to assess whether national support schemes for film and audiovisual production comply with EU law. Until very recently, the Commission based this assessment on rules contained in the 2001 Cinema Communication, with its subsequent temporary extensions. In 2011, the Commission launched a public consultation process with the aim of adapting its ten-year-old rules to the current times.

In a previous publication The Observatory described the situation up to 2012, see Nikoltchev S. (ed.), *The Future of State Aid*, IRIS *plus* 2012-3, European Audiovisual Observatory, Strasbourg, 2012. The publication you are holding in your hands (or reading on your screen) updates it with information about the rules included in the Communication on State aid for films and other audiovisual works adopted in November 2013. The Lead Article tells the story of how these new rules came to life, and gives special consideration to the consultation process that led to the adoption of the new Cinema Communication. Also, in the two years that have passed since the publication of our previous IRIS *plus*, many important developments have taken place in different member states of the European Union. These are described in the Related Reporting section of this publication. Finally, the Zoom section provides a set of basic facts and figures on the quantitative development of the market segments in question drawn from recent European Audiovisual Observatory publications. This includes the most recent development of European theatrical markets, the relative success of European and US films in the European Union, the total number of theatrical feature films produced in Europe, and the roll-out of digital projection in Europe's cinemas and assistance for cinemas in difficulty.

Willkommen, bienvenue, welcome to the 2013 Cinema Communication!

Strasbourg, March 2014

Susanne Nikoltchev
Executive Director
European Audiovisual Observatory

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The New Cinema Communication: All's Well that Ends Well?

*Francisco Javier Cabrera Blázquez & Amélie Lépinard
European Audiovisual Observatory*

Prologue

Since 2011, the cinema and audiovisual industries have awaited with great interest and in most cases some apprehension the results of a public consultation process that aimed at adapting the European Commission's 10-year-old state aid rules – the so-called Cinema Communication – to the new connected, multiscreen audiovisual landscape. Great interest because the European cinema and audiovisual industries rely to an important extent on public funding to survive in a commercial environment dominated by US productions. Apprehension because the Commission's initial proposals on two fundamental topics (territorial spending obligations and the so-called subsidy race) were perceived by many stakeholders as a rapier thrust under the belt of public funding schemes. Time and negotiation bore their fruit, and in November 2013 the Commission finally adopted its Communication on State aid for films and other audiovisual works (hereinafter: "2013 Communication"). This Communication contains revised criteria for assessing under EU state aid rules member states' support schemes in favour of films and other audiovisual works. This article tells the story of how these new rules came to life.¹ The first part provides a short description of the general EU rules concerning culture and state aid. The second part offers an overview of the Cinema Communication that the European Commission adopted in 2001, with its subsequent temporary extensions. The third part describes the consultation process that led to the adoption in 2013 of a new Cinema Communication. The fourth part gives an overview of the 2013 Communication and the various reactions to it. The article finishes with a short reflection on the near future.

I. Culture and the European Union

1. EU competence in cultural matters

The actions of the European Union in the field of culture are governed by the principles of conferral, subsidiarity and proportionality enshrined in Article 5 of the Treaty on European Union (TEU).² Under Article 2.5 and Article 6(c) of the Treaty on the Functioning of the European Union (TFEU), the European Union has competence to carry out actions to support, co-ordinate

1) This article builds upon and serves as an update to a previous one published in the IRIS plus series, which describes the situation up to 2012, see Cabrera Blázquez F.J., "Towards a New Cinema Communication" in Nikoltchev S. (ed.), *The Future of State Aid*, IRIS plus 2012-3, European Audiovisual Observatory, Strasbourg, 2012. The article is available at: www.obs.coe.int/documents/205595/865104/IRIS+plus+2012en3LA.pdf

2) Consolidated versions of the Treaty on European Union and of the Treaty on the Functioning of the European Union are available at: eur-lex.europa.eu/JOHtml.do?uri=OJ:C:2010:083:SOM:EN:HTML

or supplement the actions of the member states in the field of culture. According to Article 167 TFEU (ex Article 151 TEC), the European Union contributes “to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore”.

2. EU state aid rules

According to Article 3(b) TFEU, the European Union has exclusive competence in establishing the competition rules necessary for the functioning of the internal market. An important part of the competition rules are those concerning state aid (Articles 107-109 TFEU).

Member states’ aid schemes have to be communicated in advance to the European Commission for authorisation (Article 108.3 TFEU). The Commission assesses whether the aid scheme respects the “general legality” principle, i.e. whether or not the scheme contains clauses that would be contrary to the provisions of the EU Treaty in fields other than state aid (including its fiscal provisions). It then assesses the compatibility of the support scheme with the provisions of the TFEU dealing with state aid.

With regard to the general legality criterion, the Commission must verify, *inter alia*, that the EC Treaty principles prohibiting discrimination on the grounds of nationality and relating to freedom of establishment, free movement of goods and freedom to provide services have been respected (Articles 18, 34, 36, 45, 49, 54 and 56 TFEU). These principles are enforced together with the application of competition rules when the provisions in breach of these principles are not detachable from the operation of the scheme.

Article 107 TFEU (ex Article 87 TEC) declares incompatible with the common market “any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods ... in so far as it affects trade between Member States”. However, there are exceptions to this rule, the most relevant for the audiovisual sector being Article 107.3(c) and (d) TFEU. According to these paragraphs, two types of aid may be considered to be compatible with the common market:

- (c) aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest;
- (d) aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Union to an extent that is contrary to the common interest.

Small amounts of state aid may be exempted from the above-mentioned rules since they do not have a potential effect on competition and trade between member states (so-called *de minimis* aid).³ Furthermore, the General Block Exemption Regulation⁴ identifies aid for general training measures, up to an aid intensity of 80%, as state aid that can be considered acceptable. Such training aid, which may not exceed EUR 2 million per training project, is exempted from individual notification.

When assessing concrete cases, the Commission has to consider the necessity, proportionality and adequacy of the aid measure in order to assess its compatibility with the TFEU.

3) Commission Regulation (EC) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid (Official Journal L 352, 24 December 2013 p. 1-8), available at: http://ec.europa.eu/competition/state_aid/legislation/de_minimis_regulation_en.pdf

4) Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (General block exemption Regulation) (Text with EEA relevance), available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32008R0800:EN:NOT>. The Commission plans to adopt a revised version of the General Block Exemption Regulation (GBER) in the second quarter of 2014, see http://europa.eu/rapid/press-release_IP-13-1281_en.htm

Until the adoption of the 2013 Communication, the Commission's assessment of aid for film production was based on the state aid rules indicated in the 2001 Cinema Communication.⁵ When assessing other types of support in the film sector under Article 107.3(d) TFEU, the Commission often referred to the rules in the 2001 Cinema Communication.

II. The 2001 Cinema Communication

Assessment criteria under Article 107.3(d) TFEU

In its 1998 decision on the French automatic aid scheme for film production,⁶ the Commission established the following specific criteria that it still uses in order to assess whether state aid to cinema and TV programme production qualifies under the culture derogation of Article 107.3(d) TFEU:

- (1) The aid is directed to a cultural product. Each member state must ensure that the content of the aided production is cultural according to verifiable national criteria (in compliance with the application of the subsidiarity principle).
- (2) The producer must be free to spend at least 20% of the film budget in other member states without suffering any reduction in the aid provided under the scheme. In other words, the Commission accepted territorialisation criteria in terms of the requirement that up to 80% of the production budget of an aided film or TV work has to be spent in the country providing the aid.
- (3) Aid intensity must in principle be limited to 50% of the production budget with a view to stimulating normal commercial initiatives inherent in a market economy and avoiding a bidding contest between member states. Difficult and low budget films are excluded from this limit. The Commission considers that, under the subsidiarity principle, it is up to each member state to establish a definition of difficult and low budget film according to national parameters.
- (4) Aid for specific film-making activities (e.g. post-production) is prohibited in order to ensure that the aid has a neutral incentive effect and consequently to prevent aid granted to those specific activities from having an attraction effect to the member state granting the aid.

In its 2001 Cinema Communication, the Commission gave further explanations as to the meaning and purpose of these criteria. Firstly, state aid schemes under these rules shall support the creation of an audiovisual work and not industrial activities. State aid should be geared towards the overall budget of a specific film-making project and the producer should be free to choose the items of the budget that will be spent in other member states. Undertakings in the film and TV programme production sector may also benefit from other types of aid granted under national horizontal aid schemes authorised by the Commission under the Article 107.3(a) and (c) TFEU exemptions (e.g. regional aid, aid for SMEs, R+D aid, training aid, employment aid).

Secondly, with regard to territorialisation requirements, the Commission considers that a certain degree of territorialisation of the expenditure may be necessary to ensure the continued presence of the human skills and technical expertise required for cultural creation. This should be limited to the minimum degree required to promote cultural objectives. As to the reference for aid calculation, the Commission considers that the overall budget of an audiovisual production is the reference for aid calculation. The earmarking of aid to specific individual items of a film budget could turn such aid into a national preference towards the sectors providing the specific aided items, which might be incompatible with the Treaty.

5) Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions on certain legal aspects relating to cinematographic and other audiovisual works, COM/2001/0534 final. Official Journal C 043, 16 February 2002 p. 0006 - 0017. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52001DC0534:EN:HTML>

6) Decision of the European Commission of 29 July 1998 (N 3/98).

Thirdly, funds provided directly from EU programmes like the MEDIA programme are not state resources. Therefore, their assistance does not count for the purposes of respecting the 50% aid ceiling. Furthermore, this assistance promotes the distribution of national films abroad and, consequently, its effects do not cumulate with those of national schemes focusing on national production and distribution.

Fourthly, legal obligations imposed by member states upon broadcasters to invest in audiovisual production⁷ are not considered state aid, as long as these investments provide a reasonable compensation to broadcasters.

III. Towards a new Cinema Communication

1. The 2011 Issues Paper and the first public consultation

The state aid rules contained in the 2001 Cinema Communication were originally meant to remain valid until June 2004. However, for various reasons the Commission decided to extend their validity three times thereafter, namely in 2004, 2007 and 2009.⁸ The extension of 2009 set the expiry date of the 2001 Communication on 31 December 2012.⁹ For the purposes of adopting new assessment rules, on 20 June 2011 the European Commission launched a public consultation on public support to the film sector. To this effect, the Commission published an Issues Paper identifying areas for reflection and invited interested parties to submit their comments by 30 September 2011.¹⁰ The responses to the Issues Paper¹¹ focused mainly on the Commission's proposals concerning three fundamental points: the intensity of state aid, the so-called subsidy race and the territorial conditions.¹²

Most interested parties agreed that the maximum overall aid intensity, as set under the current rules, should not be lowered. Some professional organisations even proposed to increase several of the maximum intensity caps. However, the Commission's proposals with regard to the subsidy race and to territorial spending obligations met with harsh criticism. The existence of the subsidy race identified by the Commission was either disputed or not regarded as a problem by some European organisations representing different branches of the audiovisual sector, and some member states also disputed the necessity of introducing measures to correct the alleged subsidy race. The Commission's proposals concerning territorialisation were not well received either by some EU member states. The film funds and some professional organisations were against any modification of the rules.

2. The 2012 Draft Communication

Based on the Issues Paper and the contributions received during the first consultation, the European Commission published a draft Communication on state aid for films and other audiovisual works on 14 March 2012¹³ and opened a three-month consultation period ending on 14 June 2012.¹⁴

7) For more information on these obligations see Nikoltchev S. (ed.), *Broadcasters' Obligations to Invest in Cinematographic Production*, IRIS Special, European Audiovisual Observatory, Strasbourg, 2006.

8) See Cabrera Blázquez, F.J., *op.cit.*

9) Communication from the Commission concerning the State aid assessment criteria of the Commission communication on certain legal aspects relating to cinematographic and other audiovisual works (Cinema Communication) of 26 September 2001 (Text with EEA relevance), OJ C 31, 7 February 2009, p. 1. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52009XC0207%2801%29:EN:NOT>

10) Issues Paper, Assessing State aid for films and other audiovisual works, available at: http://ec.europa.eu/competition/consultations/2011_state_aid_films/issues_paper_en.pdf

11) All replies to the consultation are available at: http://ec.europa.eu/competition/consultations/2011_state_aid_films/index_en.html#contributions

12) For an in-depth presentation of the responses to the Issues Paper see Cabrera Blázquez, F.J., *op.cit.*

13) Draft Communication from the Commission on state aid for films and other audiovisual works: http://ec.europa.eu/competition/consultations/2012_state_aid_films/draft_communication_en.pdf

14) For more information on the public consultation see: http://ec.europa.eu/competition/consultations/2012_state_aid_films/index_en.html

The Commission also prepared a frequently asked questions document¹⁵ (FAQs section) accompanying the consultation, which aimed to clarify the major changes¹⁶ in the draft Communication by giving some illustrative examples and by further explaining some of the issues raised in stakeholders' responses to the first public consultation.

In order to ensure that European audiences be offered a more culturally diverse choice of audiovisual works, the draft Communication proposed amendments to the 2001 Communication that aimed to:

- extend the scope of activities covered by the Communication to include all aspects from the story concept to the delivery to the audience;
- limit the possibility to impose territorial obligations on production expenditure;
- control the competition between member states to attract inward investment from major productions by offering state aid; and
- recall other Commission initiatives aimed at improving the circulation of European films and increasing their audience for the benefit of both the European audiovisual industry and European citizens.

2.1. Scope of activities

One major change was the scope of activities covered by the draft Communication. According to the Commission, the protection and promotion of Europe's cultural diversity through audiovisual works can only be achieved if these works are seen by audiences. Therefore, the Commission considered it necessary and appropriate that support schemes go beyond film production to cover all aspects of film creation, from the story concept to the delivery of the film to the audience. But the general rules included in the 2001 Communication would still apply: any aid granted to a specific audiovisual work should contribute to its overall budget (excluding aid specifically granted for scriptwriting, development, distribution or promotion) and the producer should be free to choose the items of the budget that will be spent in other member states. The Commission believed that the earmarking of aid to specific components of the film budget could turn such aid into a national preference to the sectors providing the specific aided items, which would be incompatible with the Treaty.

With regard to co-productions, the aid intensity for cross-border productions funded by more than one member state and involving producers from more than one member state could be up to 60%. Difficult audiovisual works and co-productions involving countries from the Development Assistance Committee (DAC) List of the OECD¹⁷ would be excluded from these limits. In this context, a film whose sole original version is in the national language of a member state with a limited territory, population and language area would be regarded as a difficult audiovisual work.

Aid to scriptwriting or development was not limited in principle. However, the costs of scriptwriting and development were considered to be part of the production budget of a film and therefore were taken into account for calculating the maximum aid intensity for the audiovisual work.

The costs of distribution and promotion of a European audiovisual work could be supported with the same aid intensity as they were or could have been for the work's production.

15) European Commission, "State aid: Commission consults on future film support rules - Frequently asked questions (updated: 15 May 2012)", MEMO/12/186, 15 May 2012, available at: http://europa.eu/rapid/press-release_MEMO-12-186_en.htm?locale=en

16) The topics covered by the frequently asked questions section updated on 15 May 2012 are the territorial spending obligations, the so-called "subsidy race", the assessment criteria under Article 107.3(d) TFEU, the definition of "European work", the transmedia/cross media and games issue and the sequencing of release windows.

17) The DAC List of ODA Recipients shows all countries and territories eligible to receive official development assistance (ODA), see www.oecd.org/document/45/0,3746,en_2649_34447_2093101_1_1_1_1,00.html

With regard to aid to cinemas, the Commission deemed it unnecessary to establish specific rules for operating or investment aid to cinemas. In the case of support for rural and art-house cinemas or to cover their transition to digital film projection, the amounts involved are usually small, so that they would fall under the *de minimis* Regulation. Aid for renovation investment of small and medium-sized enterprises (SME) could meet the conditions of the General Block Exemption Regulation (GBER). Special cases would be assessed on a case-by-case basis.¹⁸

Finally, the draft Communication left aside certain new forms of audiovisual works. So-called transmedia projects (that is, stories told across multiple platforms and formats using digital technologies, like films and games) have among others a film production component, which would be considered to be an audiovisual work within the scope of this draft Communication. Only this film production component would fall under the scope of the draft Communication. Concerning video games, they do not necessarily qualify as audiovisual works or cultural products and have other characteristics regarding production, distribution, marketing and consumption. Therefore the Commission considered it premature to integrate this sector in the present draft Communication. Despite this, the Commission would apply the aid intensity criteria of the draft Communication by analogy if the necessity of an aid scheme targeted at cultural and educative games could be demonstrated. Aid measures in support of games not meeting the conditions of the GBER or the *de minimis* Regulation would continue to be addressed on a case-by-case basis.

2.2. Territorialisation

Fighting territorialisation seems to be a very important policy of the European Commission in recent times and at the same time one of the most controversial.

The 2012 Draft Communication introduced a radical modification of the rules applying to territorial conditions. It relied on the fact that the 2008 territorialisation study could not elucidate whether or not high territorial conditions lead to sufficient positive effects to justify maintaining the rules included in the 2001 Communication. Furthermore, the Commission recalled that new digital technologies enable the shooting and editing of films in different countries without having a detrimental effect on their technical or cultural quality, which reduced the need for linking a production to a single territory.

The draft Communication allowed member states to require that up to 100% of the aid awarded to the production of a given audiovisual work be spent in the territory offering the aid and not up to 80% of the production budget as is the case under the 2001 Communication. On top of that, for support schemes such as film tax incentives, in which the aid intensity is based on the production expenditure in a given territory, any production expenditure within the EEA should be eligible. The member state could nonetheless require that up to 100% of production aid be spent in its territory.

2.3. The subsidy race

Another controversial issue was the so-called “subsidy race”. The draft Communication tackled this issue despite opposition expressed by some member states and different professional organisations in the audiovisual sector.

The Commission was convinced that member states were increasingly using public funding to compete with each other to attract film productions to their territory. Even though financial aid used to attract inward investment may in principle be compatible with Article 107.3(d) TFEU in that it may promote culture, the Commission believed that it was appropriate to develop different standards for aiding, on the one hand, European films and, on the other hand, other films. For films

18) For more information on public support to the digitisation of cinemas see Cabrera Blázquez F.J., “Public Aid for Digital Cinema”, in Nikoltchev S. (ed.), *Digital Cinema*, IRIS plus 2010-2, European Audiovisual Observatory, Strasbourg, 2010. The article is available at: www.obs.coe.int/documents/205595/264589/IRIS+plus+2010en2LA.pdf. See also Kanzler, M. and Brunella, E., *The European Digital Cinema Report - Understanding digital cinema roll-out*, European Audiovisual Observatory, Strasbourg, 2011.

and TV productions that do not meet the definition of a European work,¹⁹ the aid would therefore be limited to the following regressive maximum aid intensities related to the production budget:

Part of the production budget	Maximum aid intensity
Less than EUR 10 million	50%
EUR 10 million - EUR 20 million	30%
Over EUR 20 million	10%

According to the Commission, this rule would limit the possible distortion of competition and would avoid further increases of budgets used for a subsidy race. It would also ensure that the location will primarily be chosen on the basis of quality and price of services, rather than on the basis of state aid.

2.4. Circulation of films and audience choice

In recent years, the European Commission has launched a number of forward-looking initiatives. They include the Europe 2020 Strategy,²⁰ the Digital Agenda for Europe,²¹ and the Commission Communication "A Single Market for Intellectual Property Rights".²² In addition, the European Commission published in July 2011 a Green Paper on the online distribution of audiovisual works²³ with the aim of gathering views on how Europe can seize the opportunities offered by the digital era and move towards a digital single market. The Green Paper should provide the basis for a debate on the possible adaptation of the regulatory framework which in turn should achieve the following three goals: enable the European industry to develop new business models, the creators to find new distribution channels and the European consumers to have better access to content throughout Europe. It also takes into account the public policy missions of film heritage institutions. An ensuing consultation sought the views of all interested parties and replies could be submitted up until 18 November 2011.²⁴

The 2012 Draft Communication dealt with three related issues addressed in the Green Paper: 1) release windows, 2) the promotion of the international availability of films online and 3) film heritage.

1. Some member states impose "release windows", that is, rules concerning the release sequence of an audiovisual work (via cinemas, pay-TV, home video sale, home video rental, free TV, and video-on-demand), as a condition for granting aid. According to the case law of the European Court of Justice,²⁵ such restrictions comply with the treaties if (i) their aim is to encourage cinematographic production as such and (ii) they do not exceed that which is necessary in order to ensure the attainment of the objective in view. Because mandatory release windows may have an impact on the visibility and circulation of audiovisual works, the Commission, however, advised member states not to link financial support of an audiovisual work to unnecessary limitations on its distribution and marketing.

19) The annex to the draft Communication provides a detailed definition of what a European audiovisual work is, based on the MEDIA programme definition.

20) http://ec.europa.eu/europe2020/index_en.htm

21) http://ec.europa.eu/information_society/digital-agenda/index_en.htm

22) Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A Single Market for Intellectual Property Rights - Boosting creativity and innovation to provide economic growth, high quality jobs and first class products and services in Europe, Brussels, 24.5.2011, COM(2011) 287 final. Available at: http://ec.europa.eu/internal_market/copyright/docs/ipr_strategy/COM_2011_287_en.pdf

23) Green Paper on the online distribution of audiovisual works in the European Union: opportunities and challenges towards a digital single market. Brussels, 13.7.2011, COM(2011) 427 final. Available at: http://ec.europa.eu/internal_market/consultations/docs/2011/audiovisual/green_paper_COM2011_427_en.pdf

24) More information on the public consultation is available at: http://ec.europa.eu/internal_market/consultations/2011/audiovisual_en.htm

25) Case 60-61/84 Cinéthèque SA, Judgment of 11 July 1985, [1985] ECR-2605.

2. The Commission was concerned about the poor distribution of most European films outside their production territories and recommended that member states promote the cross-border availability of European films. The Commission proposed that member states encourage rightsholders to grant third parties the online rights for those exploitations (including those territories) that they cannot exploit. According to the Commission this could be achieved by conditioning financial aid on the licensing of rights. Furthermore, the Commission planned to follow up on the Audiovisual Green Paper by examining a possible adaptation of the regulatory framework in order to promote the online distribution of audiovisual works. Likewise the Commission's proposal for a Council recommendation on European film in the digital era examined how to promote appropriate practices, notably by increasing the transparency of reporting and payments. Such transparency would serve to promote trust among the actors and assist in the development of digital distribution.
3. With regard to preservation of films, the Commission recommended that member states require, as a condition of financial aid, the deposit of a copy of the aided film suitable for long-term preservation in a film heritage institution designated by the relevant funding body.

3. Selected responses to the 2012 Draft Communication

Following the end of the consultation period on 14 June 2012, about sixty contributions submitted to the Commission were made available on the public consultation web page.²⁶ The consultation responses were received mainly from public authorities, film institutions and professional organisations, most of which had already expressed their views during the first consultation.

The section below is an attempt to distil the main criticisms and recommendations which emerge from the responses. Nevertheless, the linguistic diversity and the number of responses limit this reporting exercise. It is important to point out that this section must in no circumstances be considered as a full and exhaustive overview of the consultation responses. This selection is organised around five major changes in the draft Communication, i.e. the scope of activities, the territorial spending obligations, the so-called "subsidy race" issue and the circulation of films and audience choices.

3.1. *Scope of activities*

Overall, many respondents welcomed the broadening of the scope of activities across the film-making process. However, the comments which emerge relating to the eligibility of interactive products such as games and ways of delivery to the audience are worth mentioning.

A specific point relates to the explicit exclusion of games from the scope of the draft Communication. The Commission indicated in the FAQs section updated on 15 May 2012 that many respondents to the first consultation were against extending the scope to games. However, this approach was also still disputed by some of the respondents in the second round of consultation. By way of illustration, the European Film Agencies Directors (EFADs) highlighted that "[a]lthough the proposed scope has been widened, it excludes critical audio-visual elements such as VoD platforms, video games, and cinema exhibition. This omission reflects a limited understanding of what constitutes audio-visual culture. Secondly, it does not address the major challenges for the audio-visual sector in particular the challenge of digitisation, market fragmentation and the lack of risk capital. Thirdly, it illustrates a lack of consistency in relation to the Commission's supranational policies for the cultural and creative industries, especially in relation to the MEDIA Programme and the EC's overall political objectives as set-out in the EU 2020 strategy." To take another example, the UK Government supported "the rationale for not including video games in the Cinema Communication at this time but suggest[s] that this may be reconsidered at a future

26) All replies to the consultation on the draft Communication are available at: http://ec.europa.eu/competition/consultations/2012_state_aid_films/index_en.html

date.” Also, the FAQs section includes further clarifications on the manner in which games should be handled. The document recalls in particular that “any state aid measures in support of games will continue to be addressed on a case-by-case basis”. The European Coordination of Independent Producers (CEPI) welcomed the fact that the draft Communication will not apply automatically to games. In addition, the European Network of Regional Film Funds, Cine-regio, stressed that the draft Communication still lacks clarity in that respect: “As for games & cross-media with a clearly cultural aim and/or related to the promotion of a film work it is our understanding that aid schemes for this type of work will be allowed/approved in a new Cinema Communication on a case-by-case basis. In other words computer games are not excluded. This we find could be more clearly expressed in the final Communication.”

A second related problem is the question whether Video-on-Demand platforms should fall within the scope of activities. In their joint statement, the professional organisations EuroFIA, FERA, FIAPF, IVF and UNI MEI suggested that “as regards delivery to the audience, offline and online distribution/publication of films should both fall under the definition of the term ‘delivery’”. The *Centre du Cinéma et de l’Audiovisuel de la Fédération Wallonie Bruxelles* (Cinema and Audiovisual Centre of the French Community of Belgium – CCA) and the *Vlaams Audiovisueel Fonds* (Flanders Audiovisual Fund – VAF) stated that it is crucial that the new Communication also covers aid to VoD platforms. Similarly, the *Société des auteurs et compositeurs dramatiques* (SACD) and the European Coalitions for Cultural Diversity regretted that the new text omits to cover these online platforms arguing that such an approach is not in line with other EU instruments and forward-looking initiatives such as the Audiovisual Media Services Directive²⁷ or the Digital Agenda for Europe.

3.2. The territorial spending obligations

An important issue under discussion was the new Communication’s territorial spending criterion. Despite an attempt to clarify this aspect in the FAQs section published as part of the second consultation process, the Commission’s proposals met again with criticism from public authorities and professional organisations in the member states. The views expressed in the responses stressed the lack of clarity of the related provisions of the draft Communication and some respondents favoured the status quo. The BFI stated that “there is a great deal of uncertainty around the rules set out in the draft Communication as to whether aid schemes do or do not comply with the proposed new rules on territorial obligations and so, for the avoidance of doubt, the guidance in the FAQs should be incorporated into the Communication itself in order to provide some legal certainty to the industry”. According to the Belgian respondents (the CCA and the VAF), the new rule could have some harmful effects, i.e. encouraging production to relocate outside the European Union and encouraging states to abandon support systems which would no longer provide an adequate financial return. Croatia, represented by the Croatian Audiovisual Centre, the Croatian Producers Association, the Croatian Film Directors Guild and the Croatian Film Workers Association, suggested maintaining the rules as they stand. “Given that the European audiovisual sector is fragmented, characterised by plural language areas, an industry based on SMEs and weak ties to the capital markets, exacerbated by the economic downturn this is not the time to disrupt Member States willingness to support their own creative industries.” Also the French authorities suggested maintaining the existing rules. The particular concern of the UK Government was “the effect of the Commission’s proposals on the UK’s film tax relief, which is the primary mechanism for providing support for UK film production” and “the potential impact of requiring all EEA expenditure to qualify for support regardless of whether such expenditure benefits the Member State providing the aid in question.” The UK response called for more formal clarification in the draft Communication itself. The EFADs regretted “that these proposals were made without the EC having demonstrated that the territorial conditions so far implemented by Member States have had any detrimental effect on the internal audio-visual market – the production and circulation of European works. Quite the contrary, the study commissioned by the EC on this topic confirmed that territorial spending obligations had had no negative effect. The proposed new rules clearly threaten the stability and the sustainability

27) Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services

of European public support to the audiovisual sector and the ability of Member States to develop and adopt policies and strategies to meet the future challenges of the sector. The proposed criteria will significantly reduce, if not eliminate, the leverage or multiplier effect of public policies. They will, therefore, jeopardize the viability of national and regional film support schemes in many Member States, increase uncertainty for producers, threaten jobs and the level and the diversity of European film production." The Broadcasting Entertainment Cinematograph & Theatre Union (BECTU) believed "the territoriality requirements should remain as they are. This is not the time to disrupt member state willingness to support their cultural industries." The *Associazione Nazionale delle Industrie Cinematografiche, Audiovisive e Multimediali* (ANICA) was against "any change of the currently applicable criteria, in particular as proposed by the draft Communication" and stressed that the "1:1 ratio between the awarded aid and the spending obligation in the territory offering the aid is tremendously dangerous for the very survival of the movie production industry, as well as for the cultural industry in general."

3.3. *The so-called subsidy race*

In the response submitted to the Commission, the Danish Government stated that it "is not aware of the extent of the use of public subsidies that could lead to a subsidy race among the Member States. But a higher transparency for these schemes could be needed as an overview of the numbers of European and US films that are subsidised by these schemes. On this question the Commission should be aware of not disturbing the conditions for European co-production and bilateral treaties with third countries." The British Screen Advisory Council (BSAC) affirmed that "[n]o evidence of a 'subsidy race' between Member States has so far been published. Before any action is taken to limit state aid available for inward investment productions, irrefutable evidence of harm must be shown, particularly as Europe is competing on a global basis." EuroFIA, FERA, FIAPF, IVF and UNI MEI jointly stated "that the Commission's analysis is profoundly flawed in this respect. Contrary to what the Commission hopes to achieve, such revision of the Cinema Communication would have unpredictable and harmful consequences for the vitality as well as the cultural and linguistic diversity of the European film and audiovisual production and distribution sectors. It would challenge the capacity of each and every EU/EEA Member State to ensure that the entire film and audiovisual value chain, skilled workforce and high-level quality production undertakings continue to be present and/or remain viable in their country." The European Film Commissions Network (EUFCN) believed that the Commission's concern that member states will increasingly use public funds to compete for foreign film productions was unfounded. According to the EUFCN, "[a] single member state – with this also applying to the large-sized ones – does not have the capacities to secure all large-sized projects. This means that such projects are automatically apportioned among several countries. The need for regulation is therefore unnecessary. Quite the contrary, stricter regulations would lead to a lessening of the attractiveness of Europe as a base for the production of films, and to high-budget productions increasingly heading towards other continents."

Regarding the proposed reduction of the maximum intensity aid for non-European audiovisual works (when part of the production budget is over EUR 20 million), the Czech Republic said that they "have concerns that the proposed regulation may have a negative impact on the EU competitiveness in the global scale where the non-European productions will focus on support from the North America, Australia or Asia. We should take into account the benefits of the presence of non-European productions in the territory of the EU, e.g. building the film infrastructure, new technologies, know-how, promotion of Europe as a whole, increased employment related services. The evaluation of non-European aid intensive schemes shows that any reduction in the maximum intensity rate below 20% can be considered as declining EU competitiveness." Hungary believed that the "proposed new rules on the aid intensity of non-European films will harm the prospering of the European audiovisual industry on a long term and with that its capability to transmit high level cultural content to the citizens." The respondent insisted on the fact that "big-budget Hollywood productions contribute to the vital development of the sector in numerous Member States, to the ongoing training of a significant number of European professionals who provide high-level services to these productions." The UK Government was "concerned about the potential implications of introducing a regressive aid intensity scale for those productions classed as 'foreign productions' according to the criteria set out in the annex of the draft Communication, particularly given that the proposed definition of a European film is not focused on the cultural content

of the product.” Furthermore, the Polish Audiovisual Producers Chamber of Commerce (KIPA) suggested implementing “specific regulations in order to determine rules for funding non-European productions, by implementing a requirement, for example, for binding contributions to the European funds, or by determining how the non-European countries could participate in existing system of European funds. Taking into account extensive added value benefits from such co-productions, it still seems important to establish rules under which the non-European countries could bear the responsibility and certain financial obligations, entitling them to use European public funding.”

The European Producers Club highlighted the risk of losing “a certain number of foreign shootings which currently allows local industries to reap a small part of their business quote” and stated that “the consequences of this measure would lead to the closing of numerous enterprises, to the destruction of net jobs, as well as risking the culture of countries of weakened capacity of production, for which a foreign shooting can represent the survival of a crippled industry.” For Cine-regio, it was unclear “how the table of maximum aid intensities for non-European works should operate in the case of minority co-productions with non-EEA countries with which a Member State has a coproduction treaty. For example, a German (20%)-Brazilian (80%) co-production. According to the German-Brazilian coproduction treaty, such a film should be regarded as German. However, according to the definition in the draft Communication, the film would not be a European work. In the updated FAQ of 15th May 2012 it is suggested that in addition to the definition of a ‘European work’ in annex, films made under co-production treaties between Member States and third countries could also be added.”

3.4. *The circulation of films and audience choices*

Some respondents expressed their views on the issues relating to the distribution of audiovisual works addressed in the new proposed Communication, i.e. sequencing of release windows and promoting the international availability of films online. As far as “the sequencing of release windows” is concerned, the inclusion of this provision met with criticism, for instance, in France and in Ireland. France stated that it is somehow inappropriate to deal with this issue in this Communication. The Irish Film Board affirmed that it should be left to the individual member states to decide what is or is not needed. The Irish Film Board also fully supported the cross-border availability of European films. “However the non-exclusive retention of the on-line rights by the producer is a matter that in the first instance should be left to the market place and not as a mandatory condition of aid for film production”. In its response, Buma/Stemra (the Dutch collective rights organisation for copyrights regarding musical works) asserted that there are some preconditions in order to improve the exposure of European productions, i.e ensuring that copyrights are exploitable and enforceable, especially in the online world.

4. The revised 2012 Draft Communication

On 30 April 2013, the Commission published a revised version of the 2012 Draft Communication²⁸ and launched a third public consultation²⁹ on which the Commission invited comments by 28 May 2013. The revised draft Communication aimed at reflecting the contributions received on the first draft Communication. The main changes introduced by this revised version concerned mainly the territorial spending obligations and the subsidy race. Most of these changes were translated into the final Communication, which will be explained in detail in the following chapter. However, one important aspect introduced in the revised draft Communication disappeared in the final Communication adopted in November 2013: the prohibition for member states to use criteria based on the origin of goods, services or workers in the internal market. This prohibition would have meant that expenditure on goods, services or workers from any EEA country would have been eligible for support even if the scheme required that certain production activity take place in the

28) The revised draft Communication is available at: http://ec.europa.eu/competition/consultations/2013_state_aid_films/draft_communication_en.pdf

29) Information about the public consultation and all replies from stakeholders are available at: http://ec.europa.eu/competition/consultations/2013_state_aid_films/index_en.html

territory granting the aid. According to the Commission, obligations for producers to use local subcontractors and suppliers of goods and services would constitute a discrimination of services provided by non-resident firms and would go well beyond what is required to promote cultural objectives and diversity, in particular where technical services are concerned. Such discrimination would limit the freedom of companies providing film production services within the internal market and artificially increase the costs of film production, limiting the room for European films to be more competitive. For these reasons the Commission found it appropriate to exclude discrimination based on the origin of goods and services involved in film production. The Commission considered this prohibition as consistent with the case law of the CJEU, and mentioned especially the case *Laboratoires Fournier*³⁰ in this regard. In its judgment concerning a French company which manufactures and sells pharmaceutical products, the CJEU concluded that the principle of freedom to provide services precludes legislation of a member state which restricts the benefit of a tax credit for research only to research carried out in that member state.

This prohibition, which constituted a major modification of the territorial rules of the original draft Communication, was widely criticised by many participants to the public consultation. Of particular interest is a legal opinion³¹ drafted by Philip Lee Solicitors on behalf of Bord Scannán na hÉireann/Irish Film Board, which among others argues that the *Laboratoires Fournier* case is not applicable to the subject of funding for audiovisual production within the Union, nor should it be read as such. According to this legal opinion, the European Court of Justice (the current CJEU) “did not make reference to the state aid provisions generally, nor did it refer to any of the exemptions under Article 107(3), cultural or otherwise. The rationale behind the cultural exception, namely to permit aid to maintain an industry capable of expressing and preserving the culture of a Member State, is in no way comparable to the facts involved in the *Fournier* decision”.

IV. The 2013 Communication

On 14 November 2013, the Commission finally announced the adoption of a new Communication on State aid for films and other audiovisual works.³²

The new Communication introduces a number of amendments to the assessment criteria of the 2001 Communication. As foreseen in the Issues Paper and the draft Communication, they concern the scope of activities covered by the criteria, the cultural criterion, obligations concerning territorial spending, the competition to attract major foreign productions, cross-border productions and film heritage. However, the most controversial proposals made by the Commission appear somewhat “watered down” in the final Communication.

1. The new rules

1.1. Scope

The assessment criteria of the 2001 Communication focused only on the production of films. According to the Commission, aid to production alone risks stimulating the supply of audiovisual content without ensuring that the resulting audiovisual work is properly distributed and promoted. Therefore the 2013 Communication includes aid covering all aspects of film creation, from story concept to delivery to the audience.

30) Judgment of the Court of Justice of 10 March 2005, *Laboratoires Fournier* (C-39/04), ECR 2005 I-2057. Available at: <http://curia.europa.eu/juris/showPdf.jsf?text=&docid=54087&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=241755>

31) The legal opinion is available at: http://ec.europa.eu/competition/consultations/2013_state_aid_films/irish_film_board_annex_en.pdf

32) Communication from the Commission on State aid for films and other audiovisual works (Text with EEA relevance) (2013/C 332/01), available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2013:332:0001:0011:EN:PDF>

Aid to cinemas that do not fall under the *de minimis* Regulation will be assessed under the 2013 Communication as aid to promote culture in the meaning of Article 107.3(d) TFEU. Aid for cinemas promotes culture because the principal purpose of cinemas is the exhibition of the cultural product of film. Also the film production component of a transmedia project will be considered to be an audiovisual work within the scope of this Communication.

However, the 2013 Communication does not cover aid granted to games. Any aid measures in support of games not meeting the conditions of the General Block Exemption Regulation (GBER) or the *de minimis* Regulation will continue to be addressed on a case-by-case basis. To the extent that the necessity of an aid scheme targeted at games which serve a cultural or educational purpose can be demonstrated, the Commission will apply the aid intensity criteria of this Communication by analogy.

1.2. Cultural criterion

As explained *supra*, the rules concerning state aid for the audiovisual sector are based on the exception included in Article 107.3(d) TFEU concerning the promotion of culture. However, the definition of cultural activities is primarily a responsibility of the member states. Therefore, the Commission limits itself to checking whether a member state has a relevant, effective verification mechanism in place able to avoid manifest error, such as a cultural selection process to determine which audiovisual works should benefit from aid or a cultural profile to be fulfilled by all audiovisual works as a condition of the aid.

The Commission makes reference to linguistic diversity as an important element of cultural diversity and quotes the jurisprudence of the CJEU in this regard.³³ The 2013 Communication allows member states to require, as a condition for the aid, *inter alia*, that the film is produced in a certain language, when it is established that this requirement is necessary and adequate to pursue a cultural objective in the audiovisual sector, which can also favour the freedom of expression of the different social, religious, philosophical or linguistic components which exist in a given region. The fact that such a criterion may constitute in practice an advantage for cinema production undertakings which work in the language covered by that criterion appears inherent to the objective pursued.³⁴

1.3. Territorial spending obligations

Surely the most controversial of all topics debated during the public consultation process, the new rule is one of the most important changes introduced by the 2013 Communication, but it resembles little the initial proposals made by the Commission.

From the beginning, one of the Commission's main aims was to introduce a measure of proportionality into the member states' territorial spending obligations. The Commission acknowledges that the specific characteristics of the film industry, in particular the extreme mobility of productions, and the promotion of cultural diversity and national culture and languages, may justify that, to a certain extent, territorial spending obligations may be necessary to maintain a critical mass of infrastructure for film production in the member state or region granting the aid. However, following *à la lettre* the rules of the 2001 Communication, it was theoretically possible to impose territorial spending obligations up to the ceiling of 80% of the production budget, which the Commission considered disproportional to the aid granted.

In practice, hardly any member states impose territorial spending obligations up to the ceiling of 80% of the production budget allowed by the 2001 Communication. Moreover, several member states do not even have territorial spending obligations at all in their funding schemes. Many regional schemes are linked to the aid amount and require that 100% or 150% of this amount must or should be spent in the granting member state, without being specific on the origin of

33) Judgment of the Court of 5 March 2009, UTECA, Case C-222/07, Judgment of the Court of 13 December 2007, United Pan-Europe Communications Belgium, Case C-250/06 and Judgment of the Court of 28 October 1999, ARD, Case C-6/98.

34) See UTECA judgment, paragraphs 34, 36.

the subcontracted services or the origin of goods used in the production. In some schemes, the producer receiving the aid is free to spend at least 20% of the production budget outside that member state. Certain member states design the film aid as a percentage of just the local expenditure.

In the Commission's view, the amount of expenditure which is subject to territorial spending obligations should at least be proportionate to the actual support provided by a member state.

The new rules allow film production support schemes to either:

- require that up to 160% of the aid amount awarded to the production of a given audiovisual work is spent in the territory granting the aid, or
- calculate the aid amount awarded to the production of a given audiovisual work as a percentage of the expenditure on film production activities in the granting member state, typically in case of support schemes in the form of tax incentives.

In both cases, member states may require a minimum level of production activity in their territory for projects to be eligible for any aid. This level cannot, however, exceed 50% of the overall production budget. In addition, the territorial linking shall in no case exceed 80% of the overall production budget.

The Commission explains that the new 160% rule for aid awarded as grants corresponds to the 2001 Communication rule of 80% of the production budget, but only when the aid intensity reaches the general maximum of 50% of the production budget. For example: a producer is making a film with a budget of EUR 10 million and applies for aid to a scheme offering at most EUR 1 million per film. The producer can only be expected to spend EUR 1.6 million of the production budget in the territory offering the aid. However, if the film received the maximum aid amount (50% of the budget, that is, EUR 5 million), the producer would face a territorial spending obligation corresponding to 80% of the production budget (160% of the aid awarded, that is, 8 million). Under the old rules a member state could offer e.g. EUR 1 million and impose in return a territorial spending obligation of 80% of the budget, that is, EUR 8 million on a EUR 10 million film.

The following table explains the differences between the old and the new rules on the basis of a film with a budget of EUR 10 million:

Film Budget	Aid intensity up to 50%	Example of aid granted	Territorial spending obligation <i>maximum possible</i>	
			New rules <i>up to 160% of aid</i>	Old rules <i>up to 80% of budget</i>
10 million	5 million	1 million	1.6 million	8 million
		2.5 million	4 million	
		5 million	8 million	

As explained, the difference between the old and the new rule can be huge (at least in theory).

1.4. The "subsidy race"

In an interesting twist of events, the Commission has dropped its proposed rules on the so-called subsidy race. According to the 2013 Communication, foreign production on a member state's territory may have a positive effect on the national audiovisual sector and therefore such aid may in principle be compatible with Article 107.3(d) TFEU. The Commission points to the fact that many of the films which are considered to be major third country projects are in fact co-productions involving also European producers. Thereby, these subsidies would contribute also to the promotion of European audiovisual works and to sustaining facilities for national productions.

Despite this, the Commission considers it its duty to monitor the further development of this type of aid to ensure that competition takes place primarily on the basis of quality and price, rather than on the basis of state aid, notably because the amounts of aid for major international productions can be very high.

1.5. *Film heritage*

The Commission invites member states to encourage and support producers to deposit a copy of the aided film in the film heritage institution designated by the funding body for preservation, as well as for specified non-commercial use agreed with the rightsholder(s) in compliance with intellectual property rights and without prejudice to fair remuneration for the rightsholder(s) after an agreed period of time set in the grant agreement and such that this does not interfere with the normal use of the film.

1.6. *The next steps*

The 2013 Communication was published in the Official Journal of the European Union on 15 November 2013. Member states have two years from that date to bring their aid schemes in line with this Communication. The Commission will apply the rules contained in the 2013 Communication from the first day following its official publication to all notified aid measures in respect of which it is called upon to take a decision after the Communication has been officially published, even where the aid measures were notified prior to that date. In the case of non-notified aid³⁵ the Commission will apply:

- (a) the 2013 Communication, if the aid was granted after its official publication;
- (b) the 2001 Cinema Communication in all other cases.

2. Reactions to the adoption of the 2013 Communication

Most reactions to the adoption of the 2013 Communication showed relief and satisfaction, especially with regard to the compromise reached on the territorial spending obligations. The European Film Agency Directors group (EFAD) expressed its satisfaction that the Commission committed itself “to reconciling the rules of the internal market with the specificities of the European audiovisual sector” and “recognized by the new territorialisation rules the need to ensure the continuous preservation and the development of the national and local *savoir-faire*.”³⁶ The film and audiovisual industry also seemed pleased with the final text of the 2013 Communication: in a joint statement,³⁷ representatives from diverse branches of the film and audiovisual industry³⁸ welcomed that the “principle of territorial spending, which is the cornerstone of the cinematographic and audiovisual support schemes, has been preserved and will continue to apply, avoiding a serious break-up of diversified European production based on vibrant national production systems”. They also welcomed “the flexibility given to co-production schemes and the *de facto* recognition by the European Commission of the importance of co-productions in the internal market as a way to build a dynamic European market for creation”.

Member states also joined the choir to praise the 2013 Communication. In France, Aurélie Filippetti, minister of culture and communication welcomed the fact that the European Commission heard the call of the French authorities, the network of European cinema centres, artists and professionals,

35) See Commission notice on the determination of the applicable rules for the assessment of unlawful State aid, OJ C 119, 22 May 2002, p. 22, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2002:119:0022:0022:EN:PDF>

36) www.filmfonds.nl/uploads/media_items/cinema-communication-efad-press-release-14-november-2013.original.pdf

37) See www.ivf-video.org/new/public/media/EC_Cinema_Communication_Follow-up_Joint_statement_21.11.2013.pdf

38) The signatories are: Association of film and television producers (Eurocinema), Federation of European Film Directors (FERA), International Federation of Actors (FIA), International Federation of Film Distributors Associations (FIAD), International Federation of Film Producers Associations (FIAPF), Fédération des Industries du Cinéma Audiovisuel Multimédia (FICAM), International Video Federation (IVF), Society of Audiovisual Authors (SAA), International Union of Cinemas (UNIC), UNI Global Union – Media Entertainment and Arts (UNI-MEI).

to preserve the founding principles of state aid support systems (especially the territorial spending obligations) and considered this as a “victory not only for the cinema and the audiovisual sector, but also and especially for Europe and its citizens, in favour of a dynamic, rich, and resolutely innovative cultural diversity”.³⁹ In the UK, Ed Vaizey, minister for culture, communications and creative industries declared that “[i]t is fantastic that we now have a new Cinema Communication in place, confirming the on-going viability of our extremely successful film tax regime that attracts moviemakers from all over the world”. And Amanda Nevill, CEO of the BFI said that “[t]he BFI is delighted that the Commission has listened to our representations, made in partnership with other European countries, on behalf of the industry. This successful outcome is a great example of what can be achieved when the main agencies for film in the UK and across Europe come together and pool expertise”.⁴⁰

V. After the curtain falls

There is a category of Shakespearean works that are called “problem-plays” by scholars. This term was coined by critic F. S. Boas in 1896,⁴¹ and applies to some plays which are difficult to classify according to the usual definitions of comedy and drama. Boas explains that “throughout these plays we move along dim untrodden paths, and at the close our feeling is neither of simple joy nor pain; we are excited, fascinated, perplexed, for the issues raised preclude a completely satisfactory outcome, even when, as in *All’s Well* and *Measure for Measure*, the complications are outwardly adjusted in the fifth act. In *Troilus and Cressida* and *Hamlet* no such partial settlement of difficulties takes place, and we are left to interpret their enigmas as best we may.”

The long process that led to the adoption, in November 2013, of a new Cinema Communication resembles in some ways a Shakespearean problem-play. For more than two years the audiovisual industry has been “excited, fascinated, perplexed” about issues raised by the Commission that seemed to “preclude a completely satisfactory outcome”, notably with regard to the rules concerning territorial spending obligations and the so-called “subsidy race”. However, now it seems that “the complications” have been “outwardly adjusted in the fifth act” with the final adoption of the 2013 Communication. The curtain has fallen and everybody seems to applaud.

In the words of the immortal Bard, could it be said that in the case at hand *all’s well that ends well*? In the next two years member states will have to bring their aid schemes in line with the Communication, and the Commission will start to apply its rules and “interpret its enigmas as best it may”. It will be interesting though to see how the Commission will “monitor” the so-called subsidy race and it is also not to be excluded that the CJEU may be called on to check on the compatibility of the 2013 Communication with the EU Treaties, notably with regard to rules on territorial spending obligations.

That means that a new play may be just about to begin...

39) See www.culturecommunication.gouv.fr/Espace-Presses/Communiqués-de-presses/Adoption-de-la-Communication-cinéma-et-audiovisuel-par-la-Commission-européenne-une-victoire-pour-le-cinéma-et-l-audiovisuel-européens-et-annonce-d-un-grand-forum-sur-l-europe-et-la-culture

40) See www.bfi.org.uk/news-opinion/news-bfi/announcements/government-bfi-respond-ec-cinema-communication

41) Boas F.S., *Shakespeare and his Predecessors*, 1896.

Recent Developments on Film Policy

In the two years that have passed since the publication of our IRIS *plus* 2012-3 entitled *The Future of State Aid*, many important developments have taken place in different member states of the European Union. New legislative measures concerning the cinema sector were adopted in Switzerland, the Czech Republic, Lithuania, Macedonia, Portugal, Romania and Slovakia, and Montenegro is currently in process of introducing a new Law on Cinematography. In Germany not only the Film Act was amended, but a decision of the Federal Constitutional Court confirmed that its provisions concerning the film levy were in conformity with the Constitution, ending thereby a legal controversy that had endangered the German film funding system. Also controversial was the decision of the Spanish Minister of the Treasury to raise the VAT rate in Spain with respect to cultural industry services (cinemas, concerts and theatres) as of 1 September 2012. And regarding taxes, the UK's Chancellor of the Exchequer announced that he is extending the tax credit scheme, previously available to film production to high-end television productions, video games and animation.

Switzerland

Programme to Promote Diversity of Films on Offer and Digital Cinema

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On 9 March 2012 the Swiss Ministry of Culture (*Office Fédéral de la Culture* - OFC) adopted a programme intended to promote the diversity of films on offer and the digitisation of cinema theatres in Switzerland. Cinema operators switching to digital in 2011 or 2012 and offering a diversified programme will thus be able to receive financial assistance over a five-year period. A maximum amount of CHF 9 million (EUR 7,491,883) has been earmarked for financing these measures during the period from 2011 to 2015. Support from the OFC may not exceed CHF 12 000 (EUR 9,989) per cinema per year, and no more than 50% of the cost of digitisation may be covered. If the supports approved are not sufficient, the OFC will give priority to operators who make the biggest contribution to diversifying the films they offer, given their geographical location. A maximum of six screens per cinema per locality may receive support. Cinema complexes with seven or more screens and companies with more than 25 screens will not receive support. The support granted by the OFC is based on Articles 2 and 49 of the order on promoting cinema (*Ordonnance sur l'encouragement du cinéma* - OECin) (see IRIS 2003-3/26 and IRIS 2006-8/13), under which a financial contribution may be paid to encourage the diversity of offer in cinemas.

The OFC assesses the diversity of programming in cinema theatres on the basis of the number of tickets sold for each film and each cinema. Cinemas scheduling a minimum number of Swiss, European and international films from the less important film-producing countries may also receive support: the threshold is fixed at 50% of tickets sold in large towns, 30% for medium-sized towns, and 20% for small localities. The granting of financial support is also dependent on selling a minimum number of tickets and providing a minimum number of showings of the films. The OFC also takes the geographical origin of the films into account, by applying weightings. The threshold of points for receiving maximum support from the OFC depends on the region where the screen is located. Contributions are reduced or cancelled if the number of showings does not reach the minimum threshold laid down. The level of diversity is recalculated each year on the basis of the films shown during the previous three years in the cinemas receiving support. If programming diversity falls below the required minimum for more than two years, the OFC may suspend or reduce its support, or even demand repayment of contributions already paid.

Lastly, it should be noted that operators whose cinemas went digital before 1 January 2011, or will not do so before 31 December 2012, may receive reduced financial assistance (CHF 5,000, EUR 4,162) if they meet the diversity criteria laid down by the OFC.

- Programme to promote the diversity of films on offer and the digital cinema

IRIS 2012-5/9

Czech Republic

New Statute of the State Cinematography Fund Approved

Jan Fučík
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On 28 August 2013, the government of the Czech Republic approved the new Statute of the *Státního fondu kinematografie* (SFK - State Cinematography Fund).

The SFK was created on 1 January 2013 pursuant to the Act No. 496/2012 Coll. on audiovisual works and promoting cinema and amending certain laws (see IRIS 2013-2/15). The SFK is the successor of the State Fund for the Support and Development of Czech Cinematography, which was technically, procedurally and legally obsolete.

The Act defines the purpose of the SFK, which is the support of cinematography. Support is provided in two ways: "film incentives" and the general category "promotion of cinematography". The Statute of the SFK regulates and defines details of the award procedure, the main criteria and other procedural aspects. The Statute was notified to the European Commission on 5 August 2013. Following the approval of the European Commission and of the Czech Government, applicants may submit their projects online. The SFK will be used for financial support for the creation, production, distribution and promotion of new Czech films as well as technological development and projects involving publishing, education activities and film festivals.

One types of film subsidy is the category "film incentives". This means of support by tax refunds started in March 2013. The available amount of CZK 500 million (~ EUR 19.4 million) has been fully and completely allocated for specific projects that are already being implemented.

For the support category "promotion of cinematography" CZK 132 million (~ EUR 5.1 million) is available in 2013. Some CZK 30 million (~ EUR 1.2 million) has so far been spent on feature productions since those had not been supported in 2012 due to a lack of funds. In 2012, the fund held no more than CZK 102 million (~ EUR 4 million), the lowest amount since 2005 and about half of what the fund held the year before.

The new audiovisual law now uses private sources e.g. by obliging broadcasters to contribute to the SFK. In 2014, the SFK has to cope with a minimum amount of CZK 235 million (~EUR 9.1 million) in the category "Promotion of cinematography" and CZK 500 million (~ EUR 19.4 million) for the category "film incentives".

The competent authorities vary depending on the category of film subsidy. The so-called Council of the Fund, appointed by the Czech Parliament, decides on grants in the general category "Promotion of cinematography". The Council's decision is supported by a preliminary non-binding expert analysis of all applications for film subsidy. Support in the category "film incentives" is granted by the Commission of Experts appointed by the Minister of Culture. The financial resources of both categories cannot be transferred and are rigorously separated from each other.

- *Statut Státního fondu kinematografie* (Statute of the State Cinematography Fund)
<http://merlin.obs.coe.int/redirect.php?id=16694>

IRIS 2013-9/8

Act on the Support for Filmmaking

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On 26 October 2012, the Parliament of the Czech Republic adopted the new Act on the Support of the Cinematography (the Act). The purpose of the Act is the creation of an institutional basis for the development of resources to finance selected projects in Czech cinematography.

The Act regulates the conditions for the support of Czech cinematography, deriving from the Czech State Fund for Support and Development of Czech Cinematography (the Fund).

The provision of resources to individual projects is conducted by the Council of the Fund (the Council), which is an independent collective body. Its members are elected by the Parliament of the Czech Republic. The Act creates a legal environment which ensures that the financial resources of the Fund are used to finance specific works or activities serving the promotion and development of Czech cinematography. Unspent resources can be transferred to the next calendar year.

Commercial television broadcasters are obliged to contribute CZK 150 million (EUR 5.8 million) per year to the Fund. This corresponds to two percent of the overall turnover from broadcast advertising in Czech commercial television. In the case that the two percent do not reach CZK 150 million, each broadcaster has to pay a proportional share of the residue. Furthermore, the Fund is financed by one percent of the turnover of cinema ticket sales and contributions deriving from copyright to older Czech films, which is estimated to amount to up to 30 million CZK (EUR 1.2 million) per year. Also providers of retransmission and audiovisual media services on demand will have to contribute to the Fund. Retransmission providers have to pay 1 % of their revenue; on-demand AVMS providers 0.5 % of their revenue from respective activities.

If the Council reveals serious misconduct, the matter will be passed on to the tax authorities, which can order the reimbursement of granted subsidies and impose fines to be paid to the general state budget.

The Act aims to replace existing outdated regulation of film subsidy suffering from a lack of resources (see IRIS 2009-10/110). It is intended to not only support the production of films, but also to allow the Czech cinematography to become competitive.

- *Zákon č. 496/2012 Sb., o audiovizuálních dílech a podpoře kinematografie a o změně některých zákonů (zákon o audiovizu)* (Act Nr 496/2012 Coll., on the audiovisual works and on the support of the cinematography and on amendments of other laws)
<http://merlin.obs.coe.int/redirect.php?id=16252>

IRIS 2013-2/15

Germany

FFG Film Levy Consistent With Constitution

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In a decision of 28 January 2014, the *Bundesverfassungsgericht* (Federal Constitutional Court - BVerfG) confirmed that the provisions of the *Filmförderungsgesetz* (Film Support Act - FFG) concerning the film levy were in conformity with the Constitution.

The BVerfG explained, first of all, that the Federal Government was responsible for legislation on the collection of the film levy according to Articles 72 and 74(1)(11) of the *Grundgesetz* (Basic Law - GG). Opponents of the levy had argued that it fell under cultural legislation, for which the *Länder* were responsible. However, the BVerfG ruled that the Federation's legislative jurisdiction could not be dismissed on the grounds that the law had a cultural purpose as well as fulfilling economic objectives. This did not matter as long as the main purpose of the law was economic in nature. According to its objective regulatory provisions, the FFG was designed to support the German film industry and German film-making. It therefore concerned films as an economic asset, as well as the branches of industry that produced and exploited them.

The BVerfG added that, although Article 1(1)(1) FFG described the creative and artistic quality of German films as an objective of the Act, this did not alter the fact that the regulations were fundamentally economic in nature. The conditions of financial support were predominantly linked to the economic success of the film.

Federal legislation was also necessary to protect economic unity in the sense of Article 72(2) GG. There was no doubting the legislator's view that the regulations were necessary in order to safeguard (i) support for film-making regardless of location, (ii) the efficient consultation of the Federal Government with regard to the exercise of external competences in relation to film policy, (iii) film exploitation at fair market value and (iv) financing of film-making by means of a countrywide levy.

The BVerfG also considered that the FFG met the demands of financial legislation. The film levy was not a tax, but a special duty that was not dependent on the provision of a service. The reason for it was not simply to raise funds. The subgroups that paid it, i.e. cinema operators (Art. 66 FFG), programme providers and holders of video licensing rights (Art. 66a FFG) and television companies (Art. 67 FFG), as marketers of cinema films, formed a homogeneous group bound by a close interest in the purpose of the levy and held a certain responsibility to finance the film industry. Their close relationship to the industry and their responsibility to finance it were based on their common interest in the structure and success of the German film industry. The fact that the levy applied to three different subgroups between which there were not only certain differences but also a competitive relationship did not mean there was no homogeneity between them, since they all shared a common interest in the purpose of the levy.

The exclusion of companies that exploited music rights and of merchandising companies was justified, since they only exploited individual aspects of a film rather than the film as a whole and therefore only indirectly benefited from the film's success.

The BVerfG also held that the film levy provided for in Article 66 FFG was consistent with the Constitution even though, in the relevant year of 2004, the obligation of television companies to pay the levy had not been clearly defined. This situation had been rectified through the 2010 amendment to the FFG (see IRIS 2010-8/22). The backdating of the amendment was not unconstitutional because the backdated amendment had not resulted in any detrimental legal consequences.

The BVerfG also ruled that the Awards Commission of the *Filmförderungsanstalt* (Film Support Office) (Art. 7 FFG) had been legitimately elected. Although the level of personal legitimation was reduced, this was justified in view of the commission's creative and artistic expertise.

- BVerfG ruling of 28 January 2014 (2 BvR 1561/12, 2 BvR 1562/12, 2 BvR 1563/12, 2 BvR 1564/12) http://www.bundesverfassungsgericht.de/entscheidungen/rs20140128_2bvr156112.html

IRIS 2014-3/11

Culture Committee Adopts Amended Film Support Act

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The Culture Committee of the German *Bundestag* (lower house of parliament) adopted an amendment to the *Filmförderungsgesetz* (Film Support Act - FFG) at its final meeting on 15 May 2013. Under the main provision of the amendment, the *Filmförderungsanstalt* (Film Support Office - FFA) will continue to collect film contributions after the current arrangement expires on 31 December 2013. The amendment also contains a number of changes to the film support criteria.

The collection of film contributions by the FFA remains indispensable, according to the explanatory memorandum of the bill (see IRIS 2010-8/22, IRIS 2011-3/14, IRIS 2011-4/17). The film contributions, paid to the FFA by cinema operators, video companies and television broadcasters according to Articles 66 *et seq.* FFG, will continue to be levied until 30 June 2016. The success of the contribution system is illustrated by the high viewing figures recorded by films supported by the FFA. For example, in the German-language film sector, FFA-funded films accounted for 94% of viewers of all German productions.

A cut in the level of support for documentary and children's films, which had been discussed during the amendment process, was avoided following comments by the *Produzentenallianz* (Producers' Alliance) and the *Arbeitsgemeinschaft Dokumentarfilm* (Association of Documentary Film-Makers). Furthermore, the time limit for reaching the minimum number of viewers to qualify for reference funding was extended from 2.5 to 3 years. Under Articles 22 *et seq.* FFG, reference funding is available to subsidise the production of a new film if a supported film achieves a certain level of success.

An important change to the funding concept is the obligation to produce barrier-free versions of funded films (see IRIS 2012-7/15). The previous provision of Article 15 FFG was not deemed sufficient, since the production of a barrier-free version was only one of many possible ways of meeting the funding criteria. Now, therefore, an absolute obligation to produce a barrier-free version has been introduced. This is also designed to support the German government's national action plan to implement the UN Convention on the Rights of Persons with Disabilities.

The bill's adoption by the Culture Committee follows intensive negotiations between all the parliamentary parties. The unanimous decision should not only ensure that the amendment gets through the *Bundestag's* legislative process, but should also send out a strong signal for the retention of the film support system and the levying of film contributions. A comprehensive review of the FFG is expected to take place during the next legislative period (September 2013 to September 2017).

- *Pressemitteilung des Deutschen Bundestages vom 15. Mai 2013* (Press release of the German *Bundestag* (lower house of parliament) of 15 May 2013)
<http://merlin.obs.coe.int/redirect.php?id=16518>
- *Gesetzentwurf der Bundesregierung vom 19. Februar 2013* (Federal Government bill of 19 February 2013)
<http://merlin.obs.coe.int/redirect.php?id=16519>

IRIS 2013-6/13

German Film Fund Extended Until 2015

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On 21 September 2012, the Federal Government announced that the *Deutsche Filmförderfonds* (German Film Fund - DFFF) would be extended for a further three years. As part of the arrangement, film producers will, in future, be obliged to produce barrier-free versions of subsidised films.

The DFFF was created on the basis of the Directive of the *Beauftragte der Bundesregierung für Kultur und Medien* (Federal Government Commissioner for Culture and Media - BKM) "*Anreiz zur Stärkung der Filmproduktion in Deutschland*" (incentive to strengthen film production in Germany) (DFFF Directive). According to the DFFF Directive and Articles 23 and 44 of the *Bundeshaushaltsordnung* (Federal Budgetary Regulations - BHO), the *Filmförderungsanstalt* (Film Support Institute - FFA) provides funding for film production (see IRIS 2007-1/3, IRIS 2006-8/17 and IRIS 2005-8/18). From 2007 until the end of August 2012, around EUR 329 million in film subsidies was granted. Since then, according to the Minister for Culture, the DFFF has been making a decisive contribution to the competitiveness of the German film industry; its activities have now been extended for an additional three years for the second time.

As part of the extension, a number of amendments were made to the DFFF Directive. For example, the minimum number of copies for cinema release was increased (Art. 6(1)), an application deadline of at least six weeks before the start of filming was laid down (Art. 16(2)), the sum paid to German Films (the German film industry's central body for the representation of German films abroad) for foreign sales was limited to EUR 50,000 and a provision was added requiring greater account to be taken of virtual shooting in the test of cultural characteristics (Art. 10 in conjunction with Appendix 2). One important amendment stressed by the Minister for Culture is the obligation to produce barrier-free films (Art. 5(4)). This rule means that the final version of a film must also be produced with German audio description and German subtitles. It is designed to help people with impaired hearing and vision to benefit from the results of film support. The FFA can grant an exemption from this obligation in exceptional cases.

The revised Directive will enter into force on 1 January 2013.

- *Richtlinie des BKM „Anreiz zur Stärkung der Filmproduktion in Deutschland“ (Deutscher Filmförderfonds), Stand vom 17. September 2012* (BKM Directive "incentive to strengthen film production in Germany" (DFFF Directive), version of 17 September 2012)
<http://merlin.obs.coe.int/redirect.php?id=16177>

IRIS 2012-10/9

Launch of Support Programmes for Small Art House Cinema and National Film Heritage Digitisation

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At the beginning of February 2012, two new programmes for the support of digitisation in the German film sector were launched (see IRIS 2011-7/18).

On 9 February 2012, the *Land* of North Rhine-Westphalia (NRW) and the *Film- und Medienstiftung NRW* (NRW Film and Media Foundation) announced a cooperative programme to provide financial

support for the conversion of small cinemas to digital technology. The aim of the programme, which will last until 31 December 2013, is to equip around 150 screens with digital projection technology. To this end, the *Land* is making available EUR 3 million of funds granted by the European Regional Development Fund. Support will be offered to cinemas with a maximum of six screens, which have not previously been equipped with digital technology, with up to EUR 20,000 available per screen. The scheme is therefore particularly designed to promote local cultural life, small art house cinemas and the showing of European and German films. The new programme is meant to supplement existing measures in NRW to promote digitisation (see IRIS 2010-7/17) and can be combined with programmes run by the *Filmförderungsanstalt* (Film Support Office - FFA) and the *Bundesbeauftragte für Kultur und Medien* (Federal Commissioner for Culture and Media - BKM).

On 8 February 2012, at a meeting of the Culture and Media Committee of the German *Bundestag* (lower house of parliament), the BKM expressed a desire to push forward with the digitisation of the national film heritage. The aim was to safeguard historic film material for the long term and keep it accessible to the public. For this purpose, the Federal Archive would receive a sum of EUR 230,000 in 2012 in order to implement the technical requirements for inspecting, preparing and digitising the material. A further EUR 100,000 will be granted to two film foundations to digitise pre-war film material and films from the former GDR. The BKM also urged the film industry to help finance the measures needed for film heritage digitisation, as it does with cinema digitisation (see IRIS 2010-9/21).

- *Pressemitteilung der Filmstiftung NRW* (Press release of the NRW Film and Media Foundation)
<http://merlin.obs.coe.int/redirect.php?id=15746>
- *Pressemitteilung des BKM* (BKM press release)
<http://merlin.obs.coe.int/redirect.php?id=15747>

IRIS 2012-4/18

Spain

Announcement of VAT Rate Increase for Cultural Industry Services

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On 13 July 2012, the Spanish Minister of the Treasury, Mr. Cristóbal Montoro, announced the next VAT rate increase in Spain with respect to cultural industry services (cinemas, concerts and theatres) as of 1 September 2012.

Specifically, the rate should increase from the current 8% to 21%, instead of 10%, which was the first proposal, as these services have always been included in the group of reduced tax rates. But as from 1 September 2012 these cultural services should belong to the group of services to which the general rate applies, which will also be increased from 18% to 21%.

Therefore, the situation is that VAT for cultural industry services would increase by 13% in September, a measure which is seriously worrying for the cultural sector.

The only cultural industry that should not be affected by this measure is the printed book market. Here VAT should be maintained at 4% (super-reduced tax rate). However, electronic books, which are considered as being services rendered by digital means, will be subject to the general rate of 21%.

- *Real Decreto-ley 20/2012, de 13 de julio, de medidas para garantizar la estabilidad presupuestaria y de fomento de la competitividad. BOE Núm. 168 de 14 de julio de 2012 (Royal Law Decree 20/2012 of 13 July 2012, BOE No. 168 of 14 July 2012)*
<http://merlin.obs.coe.int/redirect.php?id=16117>

IRIS 2012-9/18

United Kingdom

Points-Based Cultural Tests for Tax Relief Introduced

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On 13 August 2013 the Cultural Test (Television Programmes) Regulations 2013 came into force. The Regulations introduce points-based “cultural tests” for three genres of television programmes: dramas, documentaries and animation.

The purpose is to determine whether a programme may be certified as a “British programme” by the Secretary of State under Part 15A of the Corporation Tax Act 2009 (as inserted by the Finance Act 2013).

Certification as a British programme is a condition of eligibility for television tax relief under that Act. If so, a maximum tax credit will be available to the UK production company of 25% of UK core expenditure.

The tests and points pertain to the setting; content; language; and British cultural aspects of the programme, where certain work on the programme is carried out, and the residence or nationality of the personnel involved in the making of the programme.

A project will pass the cultural test if it is awarded at least 16 out of a possible 31 points. However, there must be a distribution of the points amongst the various heads otherwise a project could pass the test only on the grounds of language, the location of the work and personnel.

- Cultural Test (Television Programmes) Regulations 2013
<http://merlin.obs.coe.int/redirect.php?id=16611>

IRIS 2013-8/21

Film Tax Credit Scheme Extended to TV, Video Games and Animation

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In his annual budget statement, the UK’s Chancellor of the Exchequer announced that he is extending the tax credit scheme, previously available to film production (see IRIS 2012-1/29), to high-end television productions, video games and animation. This will be subject to state aid approval and a consultation process, but is likely to be introduced by April 2013.

The film tax credit scheme was introduced under the Finance Act 2006. Under the provisions of the Act, the credit is available for British films intended for theatrical release costing GBP 20m or less at 20%, which means that tax is not liable to be paid on 20% of the UK expenditure on the film. For films which cost more than GBP 20m, the level of eligible tax relief rises to 25%. For films to qualify for a tax credit (or tax relief) they must conform to certain measures, including that they are made by a UK film production company; are intended for theatrical release; pass a cultural test for 'British qualities', as set out in the Films Act 1985; and are administered by the UK Film Council or made under one of the UK's film co-production treaties.

The test of 'British qualities' is complex, but in summary ranges across four categories: cultural content (setting, characters); cultural contribution (heritage, diversity); cultural hubs (photography, post-production); and cultural practitioners (director, actors). A 'cultural test' is applied with scores attributed in each of these categories - for a film to qualify, it must score at least 50% overall. The cultural test is applied by the UK film council.

The details of the application of the new scheme will be worked out during the consultation process. It has been warmly welcomed by the industries affected.

- Budget 2012: Tax Breaks for TV Production, 21 March 2012
<http://merlin.obs.coe.int/redirect.php?id=15769>

IRIS 2012-5/24

Lithuania

Corporate Income Tax Incentives for Investments in Film Production

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On 13 June 2013, the Seimas, the Parliament of the Republic of Lithuania, approved the amendment to the Law on Corporate Income Tax. The amendment intends to create incentives for investment in Lithuanian film production and will come into force once it is signed by the President of the Republic of Lithuania, which is expected to happen within the next four weeks.

The amendment envisages that the expenses of the Lithuanian film industry are deductible for Lithuanian corporate income tax purposes up to a level of 75 % of the amount. Hence, the amendment introduces the possibility of reducing the taxable income with expenses incurred due to an investment in film production if the following cumulative conditions are met:

1. At least 80 % of the expenditure of the budget of the film is incurred in Lithuania,
2. the overall budget incurred in Lithuania amounts to at least LTL 150,000, and
3. no more than 20% of the budget of the film are financed by funds of Lithuanian entities or entities with a permanent establishment in Lithuania.

However, the expenses occurred by the Lithuanian film industry cannot be deducted for Lithuanian corporate income tax purposes if they are used by the film company for one of the following purposes within the film production:

1. consultation related to an application for film subsidy;
2. preparation of the application for film subsidy;
3. payment of fines, penalties, litigation;

4. mere capital acquisition purposes, like the accumulation of fixed assets or acquisition of premises, as long as such are not necessary for or directly linked with the production of the film;
5. film production-related travel expenses if the Republic of Lithuania is neither the entry or exit country;
6. expenses arising from preparatory work on the film;
7. advertising of the film and marketing activities;
8. film distribution, and
9. extra-high remunerations for performers that are in excess of 4 % of the overall budget of the film.

The amendment applies to expenses that are provided to the Lithuanian film industry as from the year 2014.

- *Pelno Mokesčio Įstatymo 2 Straipsnio, IX1 Skyriaus Pavadinimo Pakeitimo Ir Papildymo Ir Įstatymo Papildymo 172, 462 Straipsniais Įstatymas* (Amendment to the Law on Corporate Income Tax, 13 June 2013)
<http://merlin.obs.coe.int/redirect.php?id=16563>

IRIS 2013-7/18

National Film Centre Established

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Radio and Television Commission of Lithuania

On 18 April 2012 the Government of the Republic of Lithuania adopted a Resolution by which it approved the formation of the Lithuanian Film Centre under the auspices of the Ministry of Culture.

The Lithuanian Film Centre will be established following the revised Law on Cinema of 22 December 2011, which will come into force on 1 May 2012 (see IRIS 2012-2/29).

The main aims of the activities of the Lithuanian Film Centre will be to form an effective State film policy and to foster long-term development and competitiveness in the Lithuanian cinema sector.

The Lithuanian Film Centre will perform the following functions:

- Allocate funds for the selected projects;
- Control the expenditure of funds;
- Consult with filmmakers;
- Maintain the film registry;
- Rate films according to viewers' age;
- Organise the work of the Cinema Board;
- Invite tenders to support projects on film dissemination and presentation, cinema education and cinema heritage preservation;
- Cooperate with international film festivals and film markets in order to promote Lithuanian cinema;
- Promote the attraction of investments in Lithuanian cinema;
- Hold events focusing on children's education in the cinema field;
- Perform any other foreseen functions.

The Ministry of Culture allocated LTL 0.5 million for the establishment and maintenance of the Lithuanian Film Centre for the year 2012 with an office in Vilnius and a staff of 15 persons.

- *Lietuvos Respublikos Vyriausybės 2012 m. balandžio 18 d. nutarimas Nr. 427 „Dėl biudžetinės įstaigos Lietuvos kino centro prie Kultūros ministerijos įsteigimo“* (Government Resolution of 18 April 2012 No. 427 on the Establishment of a Budgetary Institution Lithuanian Film Centre under the auspices of the Ministry of Culture)
<http://merlin.obs.coe.int/redirect.php?id=15851>

IRIS 2012-6/25

Montenegro

New Law on Cinematography Aiming to Improve Film Industry

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Montenegro is in process of introducing a new Law on Cinematography intended to provide additional funding to domestic film productions, improving respective copyright protection, and preserving national cinematographic heritage.

According to the Draft Law, one of the most important changes to the existing law would be the establishment of the Film Fund, which shall be financed from several sources; namely, shares of the annual profit of:

1. public service and commercial broadcasters with national coverage (1%);
2. cable, satellite and Internet access providers (2%);
3. organisers of games of chance and entertainment (1%);
4. operators of public communications networks (0.2%);
5. providers of on-demand audiovisual media services (3%).

The Ministry of Culture, in charge of regulating the institutional framework of the Montenegrin film industry, proposed that additional to the abovementioned funding, 5 % of each sold cinema ticket should go to the newly established Film Fund.

The ongoing public discussion has showed disagreement between Montenegrin filmmakers who strongly support the Draft and the institutions required to contribute to the Film Fund. Montenegrin Internet access providers rejected the Draft Law as unjustified and claim that the provision of Internet access does not automatically imply access to cinematographic works. Numerous other complains addressed to the Ministry during the public discussion period concerned the level of the proposed fees.

Article 12 of the Draft Law also establishes the Film Centre of Montenegro. The major task of this public institution is supposed to be the promotion of domestic films to the foreign public and the participation in international programmes.

According to UNESCO statistics, Montenegrin film production lags behind other South Eastern European countries. The newly proposed legislation is expected to improve the situation in this domain. The Draft Law on Cinematography will be on the agenda of Montenegrin Parliament in the first quarter of the 2014.

- Draft Law on Cinematography
<http://www.mku.gov.me/ResourceManager/FileDownload.aspx?rId=145999&rType=2>
- Public Discussion Report
<http://www.gov.me/ResourceManager/FileDownload.aspx?rId=150776&rType=2>

- UNESCO Statistics
<http://stats.uis.unesco.org/unesco/TableViewer/tableView.aspx?ReportId=5545>

IRIS 2014-3/34

“The Former Yugoslav Republic of Macedonia”

Amendments to the Law on Film Activity

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Independent Media Consultant

The Закон за филмска дејност (Act on Film Activity), which entered into force on 1 January 2014, was amended on 27 January 2014 in view of the funding of the State Film Agency. The Agency for Film, in addition to the funds from state budget will henceforth also be funded from other sources including: television programming services (TV broadcasters) at national, regional and local level; cable operators retransmitting television programming; Internet service providers; legal entities operating cinemas; legal entities operating in distribution, rental and sale of movies; and legal entities operating in organising games of chance and lotteries.

The Law has been specifically amended in matters of the fee that cable TV operators, Internet service providers and legal entities operating in the distribution, rental and sale of movies have to pay for the Agency for Film. The operators of public electronic communications networks, which retransmit television programming (cable operators) and the Internet service providers now will have to pay the Agency 1% (previously 2.5%) of their annual revenues, whereas those companies, which distribute, rent and sale films are obliged to pay the Agency for Film 2% (previously 3%) of their annual income. Besides the requests of broadcasters to be excluded from the obligation to dedicate 1.1% of their annual income to the Agency for Film, these provisions stayed unchanged. Representatives of the media industry and the civil sector previously demanded exclusion of those broadcasters which do not broadcast any film programming from the obligation to pay additional fees to the Agency for Film. The Parliament, however, did not follow their demands.

The amendments to the Law further specify that organisers of games of chance in betting agencies must pay fees to the Film Agency in the amount of 3% of the difference between the paid in and the paid out amount, which practically aligned this law with the Law on Games of Chances and Entertainment Games.

The funds that the Agency for Film collects will be used for the funding of film projects of public interest.

Amendments to Art. 13 of the Law on Film Activity specify the payment procedure of fees to the Agency for Film with specific deadlines.

- Закон за изменување и дополнување на Законот за филмската дејност (Act amending the Law on Film Activity)
<http://sobranie.mk/ext/materialdetails.aspx?Id=46561b8b-f4c4-4254-a32f-55b70cc2abcf>

IRIS 2014-3/36

New Law on Film Activities Fostering Film Productions in Macedonia

Borce Manevski
Independent Media Consultant

The Закон за филмска дејност (Act on Film Activities - LFA) entered into force on 1 January 2014. It aims to support and intensify the film activities in the country and to create positive conditions for further development of the film infrastructure.

The Agency for Film will be the main State body, which will directly support the film activities and will work in accordance with a four-year Strategy for Development of Film Activities in the Republic of Macedonia. The Head of the Agency as well as the members of the Managing Board will be directly appointed by the national Government.

The Agency will have an obligation to fund various projects that are of national interest for the country. According to Articles 11 and 12 LFA, the Agency for Film will be primarily funded from the general State budget, but the text of the law does not foresee a specific figure or even an approximate amount of how much of State funds will flow through the Agency's budget. On the other hand, another mechanism should provide additional funding:

1. licensed TV broadcasters will be obliged to pay 1.1% of their gross income for the previous year to the Agency for Film;
2. cable-TV operators will pay likewise 2.5% of their gross income;
3. internet service providers likewise 2.5%;
4. legal entities organising gambling activities likewise 1.3%;
5. legal entities publicly showing films likewise 5%;
6. legal entities distributing, lending, or selling films likewise 1.3%.

The non-governmental organisation Media Development Centre (MDC) suggests a reduction in broadcasters' financial obligations: "We suggest to the Government not to impose any new taxes on the electronic media and to fund the Film Agency from the State budget." MDC fears that "due to the previous experiences with the Government's advertising, this could deepen the Government's control over the media in Macedonia". The political advertising was also noted as a concern in the EU Country's Progress Report for 2013: "There are continued concerns about government advertising spending, which is claimed by many to be directed only towards pro-government media, giving them a significant financial advantage." Also, the text of the law does not make a distinction between the different types of TV broadcasters, so according to the representatives from MDC, those TV channels that do not broadcast any film programming, like music, news or other non-film genre channels, should be excluded from the obligation.

The Association of Private Electronic Media of Macedonia (ZPMM) is concerned that the law could overburden the media companies, taking into account the still existing financial obligations: "The fees we pay to the collective rights management associations together with the obligation to pay part of our annual gross income to the Agency for Film will reach more than 5 or 6 per cent, if not even more, of our total gross income." ZPMM announced that commercial broadcasters are considering an appeal against the act in the Constitutional Court.

- Закон за филмска дејност, Службен весник на РМ, бр. 82 од 05.06.2013 година (Act on Film Activities, Official Gazette no. 82, 5 June 2013)
<http://merlin.obs.coe.int/redirect.php?id=16839>
- The former Yugoslav Republic of Macedonia 2013 Progress Report, European Commission, SWD(2013) 413 final, 16 October 2013
<http://merlin.obs.coe.int/redirect.php?id=16768>

- ЗАКОНОТ ЗА ФИЛМСКА ДЕЈНОСТ ПРЕД УСТАВЕН СУД (The reaction of ZPMM on the Act on Film Activities)
<http://merlin.obs.coe.int/redirect.php?id=16840>

IRIS 2014-2/26

Portugal

Adoption of the Specific Regulations Implementing the New Act on Cinema and Audiovisual Media

*Mariana Lameiras & Helena Sousa
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Specific regulations implementing the new Law for Cinema and Audiovisual Media (see IRIS 2012-7/33) were published in the official news bulletin, *Diário da República*, and all the legal requirements detailed in these documents are in force since the end of February 2013. The law came into force in October 2012, though much of its content depended on the adoption of specific regulations. These regulations stipulate the fees applicable to operators in the field of investment in cinematographic and audiovisual production (referring to ICA, the Portuguese Institute of Cinema and Audiovisual Media), supervision and fines.

The Act on Cinema and Audiovisual Media introduced a new financing model for the sector, since the number of funding sources is increased, including private television broadcasters (called "SIC" and "TVI"), operators of audiovisual services on demand, video stores, the so-called premium channels (such as "Sport TV"), as well as distributors and exhibitors (such as "Zon Lusomundo"). The absence of specific legislation for the regulation of fees in 2012 hindered the opening of public contests within the support programs for the creation, production, exhibition and distribution of cinematographic works. This situation now has a legal framework due to the approval, by the Council of Ministers, of Law-Decree no. 9/2013, which enters into force on 24 February 2013. This Law-Decree defines the regulation of the determination, collection, payment and fees supervision, as established in the Cinema and Audiovisual Law. 60 % of the fees collected are handed over to the State and 40 % to ICA (in application of Article 9 of the Law-Decree).

Moreover, the following specific regulations also come into force (as from 31 January 2013) and describe the conditions on which public tenders, in different support programs, shall be conducted:

- Decree no. 57-A/2013 (Portaria n.º 57-A/2013) relates to support programs for production. It authorizes the ICA to proceed with the allocation of resources for fiction films, first work of fiction films, short fiction films, documentaries, short animation films, and co-productions, up to a total amount of EUR 8,190,000. According to Article 2, the expenses resulting from future contracts for financial support envisage amounts of EUR 1,838,000 for 2013, of EUR 4,843,000 for 2014, of EUR 1,329,000 for 2015, and of EUR 180,000 for 2016;
- Decree no. 57-B/2013 (Portaria n.º 57-B/2013) establishes the support conditions for participation in international festivals and markets, for festivals organization and for the sector bodies. The ICA is responsible for resources allocation through public tenders, having the total amount of EUR 404,000 for the year 2013, increasing to EUR 476,000 for the following year and EUR 100,000 for 2015 (as established by Article 2 of the decree);
- Decree no. 57-C/2013 (Portaria n.º 57-C/2013) relates to support for distribution. It defines the conditions on which national productions can receive support for distribution, nationally or outside Portugal, as well as for non-national cinematographic works less widespread in the

- national territory. While this year, the total amount of funding available within this support program is EUR 500,000, it will be reduced to EUR 155,000 in 2014;
- Decree no. 57-D/2013 (Portaria n.º 57-D/2013) allows the ICA to proceed with the allocation of exhibition support, which includes programs for non-commercial and commercial exhibition.
 - Decree no. 57-E/2013 (Portaria n.º 57-E/2013) defines the conditions on which the support program for the creation of cinematographic productions can be applied. The ICA is also responsible for this program, which includes support for scriptwriting fiction productions, series and animation films development, as well as documentaries.
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- *Decreto-Lei 9/2013, de 24 de janeiro - Estipula a cobrança de taxas a operadores do setor para investimento na produção cinematográfica e audiovisual - Publicado no "Diário da República" n.º 17, 1ª Série, de 24-01-2013 (Law-Decree no. 9/2013, of 24 January - Stipulates fees collection to operators in the sector for investment in cinematographic and audiovisual production - published in the official news bulletin, no. 17, 1st Serie, of 24 January 2013)*
<http://merlin.obs.coe.int/redirect.php?id=16365>
 - *Portaria n.º 57-A/2013 - Fica o ICA autorizado a proceder à repartição de encargos relativos aos contratos de apoios na tipologia de Apoio à Produção, que compreende os programas de apoio à produção de Longas-metragens de ficção, Primeira Obra de Longa metragem de ficção e Curtas-metragens de Coproduções e Automático (Decree no. 57-A/2013 - Support for the production of cinematographic works)*
<http://merlin.obs.coe.int/redirect.php?id=16366>
 - *Portaria n.º 57-B/2013 - Fica o ICA autorizado a proceder à repartição de encargos relativos aos contratos de apoios nas tipologias de Apoio à participação em festivais e mercados internacionais, Apoio à realização de festivais e Apoio a entidades do setor (Decree no. 57-B/2013 - Support for participation in international festivals and markets)*
<http://merlin.obs.coe.int/redirect.php?id=16366>
 - *Portaria n.º 57-C/2013 - Fica o ICA autorizado a proceder à repartição de encargos relativos aos contratos de apoios na tipologia de Apoio à Distribuição, que compreende os Programas de Apoio à distribuição em território nacional de obras apoiadas pelo ICA, Apoio à distribuição em território nacional de outras obras nacionais e de obras não nacionais de cinematografias menos difundidas e Apoio à distribuição de obras nacionais fora de Portugal (Decree no. 57-C/2013 - Support for the distribution of cinematographic productions)*
<http://merlin.obs.coe.int/redirect.php?id=16367>
 - *Portaria n.º 57-D/2013 - Fica o ICA autorizado a proceder à repartição de encargos relativos aos contratos de apoios na tipologia de Apoio à Exibição, que compreende os Programas de Apoio à exibição não comercial e de Apoio à exibição comercial (Decree no. 57-D/2013 - Support for the exhibition of cinematographic productions)*
<http://merlin.obs.coe.int/redirect.php?id=16368>
 - *Portaria n.º 57-E/2013 - Fica o ICA autorizado a proceder à repartição de encargos relativos aos contratos de apoios na tipologia de Apoio à Criação, através das modalidades de apoio à escrita de argumentos para longas-metragens de ficção, ao desenvolvimento de séries e filmes de animação e de documentários cinematográficos (Decree no. 57-E/2013 - Support for the creation of cinematographic productions)*
<http://merlin.obs.coe.int/redirect.php?id=16368>

New Act on Cinema and Audiovisual Media

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On 6 July 2012, the *Assembleia da República* (Portuguese Parliament) adopted the Act on Cinema and Audiovisual Media, which defines a set of State principles for the development and protection of the art of cinema and of audiovisual activities. This document will modify the Portuguese framework for the cinema and audiovisual sector, as established by Law no. 42/2004, of 18 August 2004.

The main amendment introduced by this Act relates to the financing model of the sector. It aims to increase the sources of funding, including the direct involvement of television broadcasters.

Moreover, it defines a programme for cinema designed to provide financial incentives for the writing, development, production and co-production as well as for the exhibition and distribution of national cinematographic works. Another programme for the support of the audiovisual and multimedia sector is provided in order to financially assist independent productions and to promote television broadcasting. A specific audiovisual programme is also considered with the main purpose of complementing, with funding from the *Instituto do Cinema e do Audiovisual* (Institute of Cinema and Audiovisual Media – ICA), the support given to television broadcasters for the writing and production of films, series and documentaries. Nevertheless, this funding comes mainly from fees collected from TV broadcasters: a fee applied to the exhibition of commercial advertising (namely by cinema theatres and TV broadcasters), which is 4% of the price paid, a fee of EUR 5 for each subscription applied to TV subscribed broadcasters, and an annual contribution of EUR 1 for each individual subscription for on-demand broadcasters. On one hand, the income from exhibition fees is 3.2% of ICA's revenue and 0.8% of the revenue of the *Cinemateca Portuguesa – Museu do Cinema* (Portuguese Cinema Museum). On the other hand, revenues from the other mentioned fees become part of the ICA's own funding.

One of the main purposes of this new act is to promote media literacy. Therefore, the objective is to contribute to the education and training of different sectors of the public through support for cinema festivals, the promotion of exhibitions of cinematographic activities in municipalities and cultural associations and, above all, to encourage media literacy in schools. This measure includes pedagogic content for schoolteachers considering a connection with curricular programmes and also digital access to foreign films of high repute.

- *Lei do cinema e audiovisual, 6 de julho de 2012* (Act on Cinema and Audiovisual Media, 6 July 2012)
<http://merlin.obs.coe.int/redirect.php?id=16001>

IRIS 2012-7/33

Romania

National Film Institute Established

Eugen Cojocariu
Radio Romania International

On 26 June 2013, the Romanian Government adopted the *Ordonanța de Urgență nr. 72/2013 privind reorganizarea unor instituții publice aflate în subordinea Ministerului Culturii* (Emergency Decree no. 72/2013 on reorganisation of public institutions subordinated to the Ministry of Culture), which establishes the *Institutul Național al Filmului* (National Film Institute - INF).

According to the Decree, the *Arhiva Națională de Filme* (National Film Archives), the *Studioul de Creație cinematografică* (Cinematographic Creation Studio) and the *Studioul Video Art* (Video Art Studio - formerly Editura Video) will be merged into INF, and subordinated to the Ministry of Culture of Romania.

According to a Draft Government Decision on the establishment and the functioning of the INF, which will complement the Emergency Decree no. 72/2013, the INF will also include the *Cinemateca Română* (Romanian Cinematheque) and the Film Restoration Laboratory.

The INF will be the legal storage facility for cinematographic films of all kinds: film, film materials and documents on the history of the national and worldwide cinematography (including original scripts, posters, photos, music scores, books and other publications, film reviews, technical equipment with historical, documentation and technical value, primary or intermediary film materials, and positive copies of foreign films, etc.). The INF will carry out the duties of the three former institutions. The merged INF will then focus on the evidence, the collection, conservation, restoration and the valorisation of the cinematographic heritage. The INF is also intended to support features, documentaries and short films, TV series, along with co-productions and to provide services for foreign partners.

The INF can set up branches of the *Cinemateca Română* throughout the country, in order to support the cinematographic culture of the people. In Romania and abroad, the Institute will have to buy film copies, documents and other objects of significant cultural, documentary, scientific, technical or artistic value, including those held by private collectors. The INF has to organise film festivals and events in Romania and abroad. The new body also will have to document Romania's cinematography by means of publishing books and other works.

The INF is taking over the 84,500 square metre premises of the National Film Archives in Jilava, near Bucharest, and three cinemas (Eforie, Union and Studio) in Bucharest. The INF will be funded from its own revenues and by state budget subsidies.

- *Ordonanța de Urgență nr. 72/2013 privind reorganizarea unor instituții publice aflate în subordinea Ministerului Culturii. Publicat în Monitorul Oficial, Partea I nr. 388 din 28 iunie 2013* (Emergency Decree no. 72/2013 on reorganisation of public institutions subordinated to the Ministry of Culture. Official Journal, Part I n. 388 of 28 June 2013)
<http://merlin.obs.coe.int/redirect.php?id=16667>
- *Proiect de Hotărâre de Guvern privind organizarea și funcționarea Institutului Național al Filmului* (Draft Government Decision on the establishment and functioning of the National Film Institute)
<http://merlin.obs.coe.int/redirect.php?id=16668>

IRIS 2013-9/22

Slovakia

New Film Incentives Strategy

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Office of the Council for Broadcasting and Retransmission of Slovak Republic

On 22 October 2013 the Slovak Parliament passed an Amendment (No. 374/2013 Coll., hereinafter "Amendment") of Act. No 516/2008 Coll. on funding of the audiovisual sector (hereinafter "Act"). The Amendment was signed by the President on 11 November and will enter into force on 1 January 2014.

The main purpose of the Amendment is to increase the international competitiveness of the Slovak audiovisual industry by attracting international audiovisual productions to the Slovak Republic with cash rebates. While the present system of contributions for the domestic audiovisual sector remains the same, the new support scheme offers 20 % cash rebate of “just” expenditures made in connection with a film project that meets criteria laid down by the Act. “Just” expenditures are payments for goods and services to businesses established in Slovakia or revenue being taxed in Slovakia made after obtaining the “certificate on the registration of the film project” (hereinafter only “certificate”) from the Audiovisual Fund (hereinafter only “Fund”) office.

Only cinematographic works of fiction, documentary and cartoon, or works for television broadcasting meeting criteria of a “culture test”, or with co-production status according to the European Convention on Cinematographic Co-production are eligible for the certificate. Details regarding the culture test, the minimum length and the minimum budget of film projects are to be laid down by the bylaw of the Ministry of Culture.

The producer or the co-producer authorised by the rest of co-producers of the film project, or a person in contractual relationship with producer or co-producers of the film project are entitled to apply for the certificate. An applicant who is bankrupt or in liquidation, against whom execution procedures are in progress, whose financial relations with the public bodies are not fully settled, who breached the prohibition of illegal employment, or who has not submitted accounts for the financing from the audiovisual fund cannot obtain the certificate. The applicant must not be member of the board, member of the supervisory commission, the director of the Fund, or a person with a close relationship to the director. To apply for the certificate the applicant must pay a non-refundable administrative fee of EUR 1,000.

If the film project successfully meets all criteria the applicant will obtain the certificate valid for three years. Having finalised the production the holder of the certificate can apply for a cash rebate. The Fund may reject an application with a valid certificate only if the applicant fails to present any of the necessary documents verifying the actual payments along with other confirmations from various public authorities.

The law explicitly states that there is no legal claim to the cash rebate. If the Fund does not reject the application it will issue a “confirmation of the total amount of just costs.” Any financial support from public bodies will be deducted from this total amount. With this confirmation the Fund issues a proposal contract valid for thirty days. In this proposal, the Fund commits to provide 20 % of the confirmed just costs whereas the applicant guarantees that the production will meet the given criteria (genre, minimum length, budget, compliance with culture test) after its public release.

- *Zákon, ktorým sa mení a dopĺňa zákon č. 516/2008 Z. z. o Audiovizuálnom fonde a o zmene a doplnení niektorých zákonov v znení neskorších predpisov a ktorým sa menia a dopĺňajú niektoré zákony (Amendment No 374/2013 Coll of Act. No 516/2008 Coll. on funding of the audiovisual sector) <http://merlin.obs.coe.int/redirect.php?id=16767>*

A New Cinema Communication – Background Data

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When analysing new film policy regulations, it is always a good idea to take a step back and look at some basic facts and figures describing the quantitative development of the market segments in question. A good understanding of underlying economic trends helps to better put new regulations like the Cinema Communication adopted in 2013 into context.

The selection of data presented below drawn from recent European Audiovisual Observatory publications provides some background information on the following issues:

- the most recent development of European theatrical markets;
- the relative success of European and US films in the European Union;
- the total number of theatrical feature films produced in Europe;
- the roll-out of digital projection in Europe's cinemas and assistance for cinemas in difficulty.

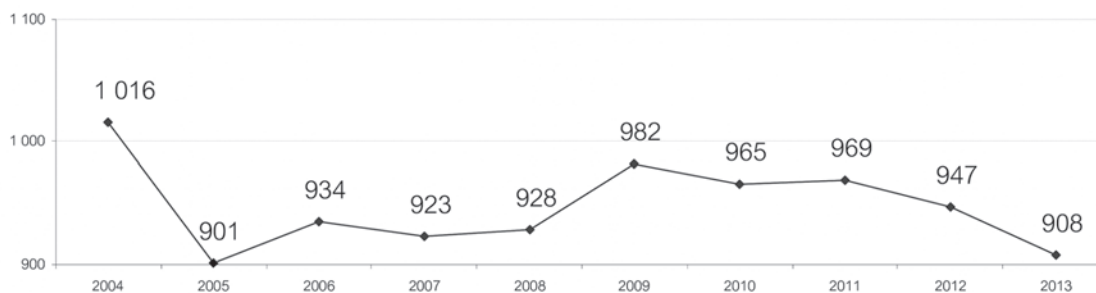
Development of European theatrical markets in 2013

The Observatory estimates that total admissions in the European Union¹ dropped by 4.1% to 908 million tickets sold, around 39 million less than in 2012 (947 million). This would mark the second lowest admissions level in the EU since the turn of the century.

More than two thirds of EU markets experienced a decline in admissions, while admission levels increased in only 8 out of the 26 EU territories for which provisional data were available. The cumulative admissions drop in the EU was however driven by the significant decline in four out of the five largest EU markets: Spain (-15.2 million; -16%), France (-10.8 million; -5.3%), the UK (-7 million; -4%) and Germany (-5.4 million; -4%). Only Italy withstood the general downward trend with admissions estimated to have grown by 6.6% to 106.7 million tickets sold. Apart from Italy, year-on-year growth in cinema attendance of over 1% could only be achieved in six Central and Eastern European member states, led by Bulgaria (+16.7%), Romania (+13.8%) and Lithuania (+6.8%).

As often in the past years, significant growth was only achieved outside of the EU. With admissions growing by 10.5% to 173.5 million tickets sold in 2013 the Russian Federation overtook the UK as the second largest European market in terms of admissions. Box office records were also broken in Turkey, with cinema attendance growing by 14.8% to 50.4 million admissions, the highest level in the past few decades.

Cinema attendance in the European Union 2004-2013 provisional in millions, estimated; pro-forma calculations taking into account new member states



Source: European Audiovisual Observatory

National & US market shares

The market share of national films tends to fluctuate depending on the success of generally a few local blockbusters. National market shares increased in 13 and declined in 10 EU markets for which data were available. US market share on the other hand increased in 11 out of the 13 markets for which provisional data were available with the average US market share in these markets increasing from 63% to 68%.

Despite dropping to its lowest level in years, France remained the EU market with the highest national market share with local productions taking 33% of total admissions (down from 40% in 2012), followed by Italy (31%), Denmark (30%) and Germany (26%). Looking outside of the EU, Turkey remained the leading European country in terms of national market share with Turkish films taking a record share of 58% of total admissions in 2013, a level unparalleled in any other European market in the past few decades.

1) Calculated on a pro-forma basis for the 28 EU member states as of 2014.

Gross box office

Though it is too early to estimate total gross box office (GBO) for the EU, preliminary data suggest that – in contrast to the past three years – increasing ticket prices in 19 out of 25 EU markets no longer sufficed to compensate for the decline in admissions with GBO declining in 14 out of the 25 EU markets for which data were available.

Key cinema data in European Countries 2012-2013 provisional

Country	Admissions (in mio)			Currency	GBO (in mio)			National market share ¹⁾		Sources
	2012	2013 prov	Change %		2012	2013 prov	Change %	2012	2013 prov	
European Union member countries (EU 28)										
AT Austria ^{est}	16,4	15,7	-4,2%	EUR	131,9	131,0	-0,6%	1,7%	4,0%	OBS / ÖFI
BE Belgium ^{est}	21,9	n.c.	n.c.	EUR	158,8	n.c.	n.c.	n.c.	n.c.	FCB
BG Bulgaria	4,1	4,8	16,7%	BGN	34,0	39,8	17,3%	4,8%	0,6%	National Film Center
CY Cyprus ^{est}	0,8	0,6	-24,4%	EUR	6,3	4,9	-22,5%	n.c.	0,1%	Min. Cult.
CZ Czech Republic	11,2	11,1	-1,1%	CZK	1 275,6	1 424,2	11,7%	24,3%	24,2%	Czech Cinematography Fund
DE Germany	135,1	129,7	-4,0%	EUR	1 033,0	1 023,0	-1,0%	18,1%	26,2%	FFA
DK Denmark	13,6	13,6	-0,2%	DKK	1 053,4	1 051,8	-0,2%	28,7%	30,0%	Danish Film Institute
EE Estonia	2,6	2,6	-1,1%	EUR	11,4	11,8	3,3%	7,6%	5,9%	Estonian Film Foundation
ES Spain ^{est}	94,2	79,0	-16,1%	EUR	614,2	510,7	-16,8%	17,0%	13,9%	ICAA (2012) / OBS (2013)
FI Finland	8,4	7,8	-7,0%	EUR	78,8	76,0	-3,6%	28,1%	23,0%	Finnish Film Foundation
FR France	203,6	192,8	-5,3%	EUR	1 305,6	n.c.	n.c.	40,3%	33,3%	CNC
GB United Kingdom ²⁾	172,5	165,5	-4,0%	GBP	1 099,0	1 083,0	-1,5%	32,1%	21,5%	BFI / CAA / Rentrak
GR Greece ^{est}	10,1	9,2	-9,0%	EUR	70,2	59,3	-15,5%	6,9%	7,2%	Greek Film Center / Media Salles / OBS
HR Croatia	4,1	4,0	-1,6%	HRK	111,9	121,0	8,1%	8,6%	11,1%	Croatian Audiovisual Center
HU Hungary ^{est}	9,5	9,7	2,2%	HUF	12 000,0	12 900,0	7,5%	1,5%	1,5%	NMHH
IE Ireland ^{est}	15,4	n.c.	n.c.	EUR	108,3	n.c.	n.c.	1,5%	n.c.	Irish Film Board
IT Italy ^{est}	100,1	106,7	6,6%	EUR	637,1	646,3	1,4%	26,5%	31,0%	Cinetel / SIAE / OBS
LT Lithuania	3,0	3,3	6,8%	LTL	40,6	45,4	11,9%	2,8%	16,5%	Lithuanian Film Centre
LU Luxembourg ^{est}	1,3	1,2	-3,9%	EUR	9,4	9,1	-3,4%	n.c.	n.c.	Media Salles
LV Latvia	2,3	2,4	4,0%	LVL	6,9	7,2	5,7%	4,1%	4,0%	National Film Centre
MT Malta ^{est}	0,7	0,7	-6,9%	EUR	4,0	3,7	-7,0%	n.c.	n.c.	Media Salles
NL Netherlands	30,6	30,8	0,8%	EUR	244,6	249,4	2,0%	14,2%	20,5%	NFF / MaccsBox - NVB & NVF
PL Poland	38,5	36,3	-5,7%	PLN	711,3	665,2	-6,5%	16,1%	19,9%	Polish Film Institute
PT Portugal	13,8	12,5	-9,4%	EUR	74,0	65,4	-11,5%	5,3%	3,4%	ICA
RO Romania	8,3	9,5	13,8%	RON	144,8	168,0	16,0%	3,6%	3,2%	Centrul National al Cinematografiei
SE Sweden	18,4	16,6	-9,6%	SEK	1 815,7	1 643,0	-9,5%	22,1%	24,8%	Swedish Film Institute
SI Slovenia	2,7	2,3	-16,1%	EUR	12,0	10,6	-11,7%	4,8%	10,7%	Slovenian Film Center
SK Slovakia	3,4	3,6	4,8%	EUR	17,5	18,8	7,1%	3,1%	4,5%	UFD / Slovak Film Institute
EU 28 Total ^{est}	947	908	-4,1%	EUR	6 569	~	~	~	~	European Audiovisual Observatory
Other European countries										
CH Switzerland	15,5	13,3	-14,2%	CHF	242,6	207,8	-14,3%	4,8%	6,7%	OFS
IS Iceland ^{est}	1,4	1,4	-4,0%	ISK	1 524,6	1 494,2	-2,0%	9,1%	3,1%	Statistics Iceland (2012) / OBS (2013)
MK FYR of Macedonia	0,2	0,1	-61,8%	MKD	20,4	7,6	-62,9%	26,6%	n.c.	Macedonian Film Fund
NO Norway	12,1	11,8	-2,7%	NOK	1 110,1	1 095,1	-1,4%	17,9%	22,8%	Film & Kino
RU Russian Federation	157,0	173,5	10,5%	RUB	37 419,3	41 873,9	11,9%	15,1%	18,8%	Nevafilm / Russian Film Business
TR Turkey	43,9	50,4	14,8%	TRY	421,9	505,3	19,8%	47,0%	58,0%	Antrakt

1) Based on admissions except for BG, GB, IS and RU. Includes minority co-productions with the exception of CH, FI, HU, NO and SE.

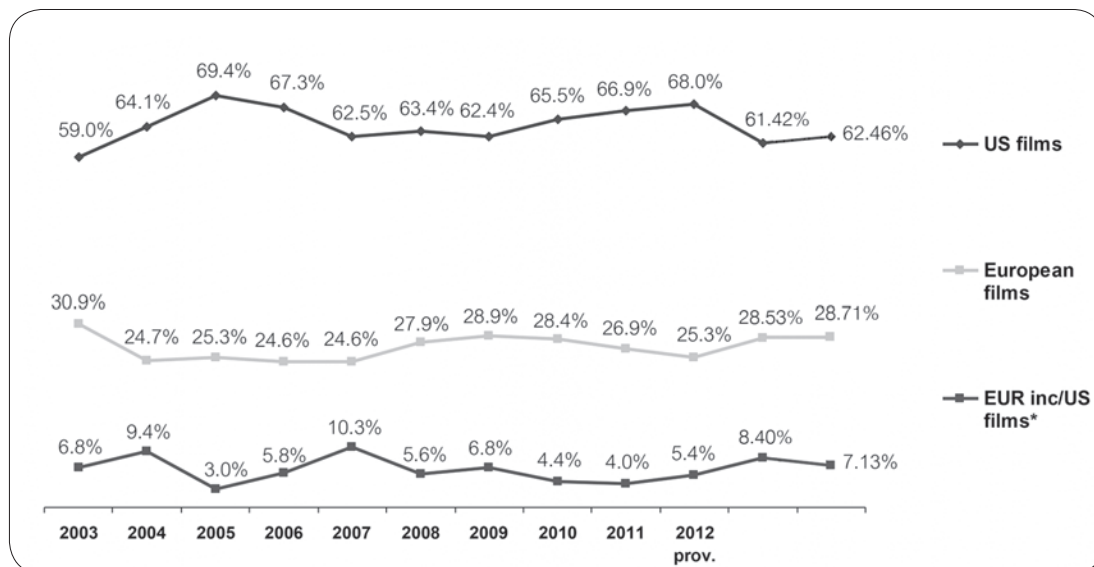
2) National market share based on GBO up to and including 19 January 2014, includes minority co-productions.

Source: European Audiovisual Observatory

The European film industry in context – background data

Market share of European and US films in the European Union (2003-2012)

By % of the total admissions

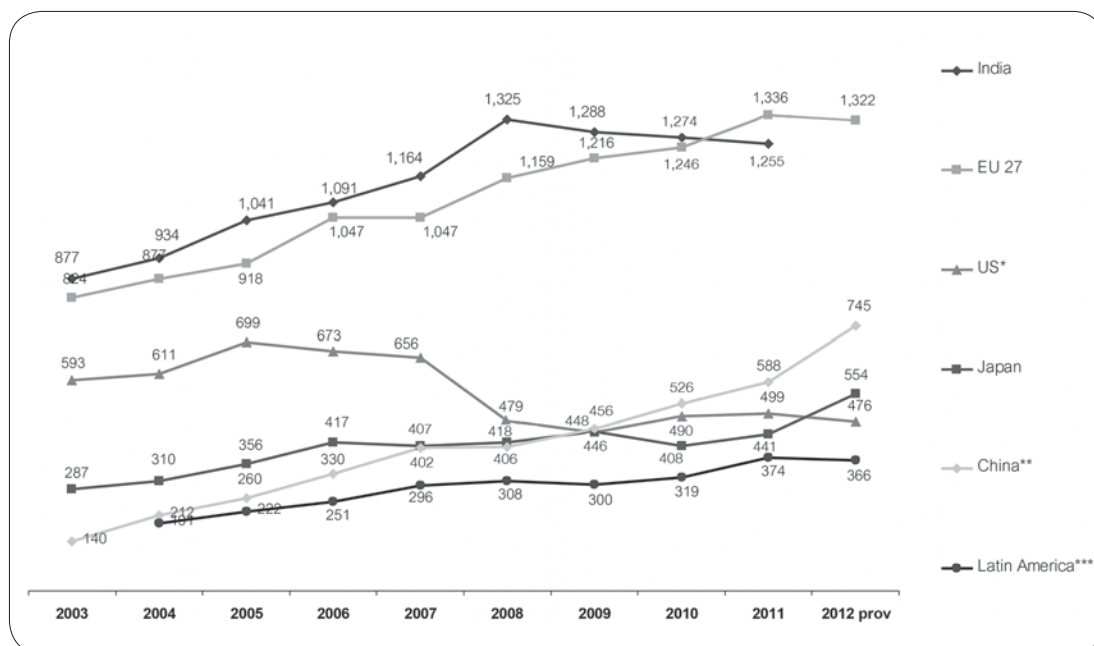


*Films produced in Europe but benefitting from US inward investment. Examples include *Skyfall* or the *Harry Potter* series.

Source: European Audiovisual Observatory

Number of theatrical feature films produced in major world markets (2003-2012)

In units



* Revised data series from 2008 (Does not include feature documentaries, films with budgets below USD 1 m or student films).

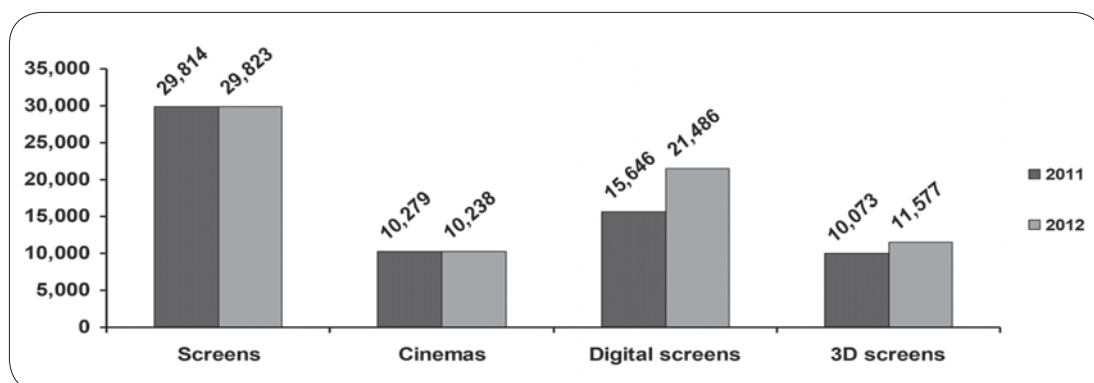
** Officially approved films only.

*** Total includes films from Argentina, Brazil, Chile, Colombia, Mexico, Peru, Uruguay and Venezuela.

Source: European Audiovisual Observatory

Number of cinemas and screens in the EU (2011-2012)

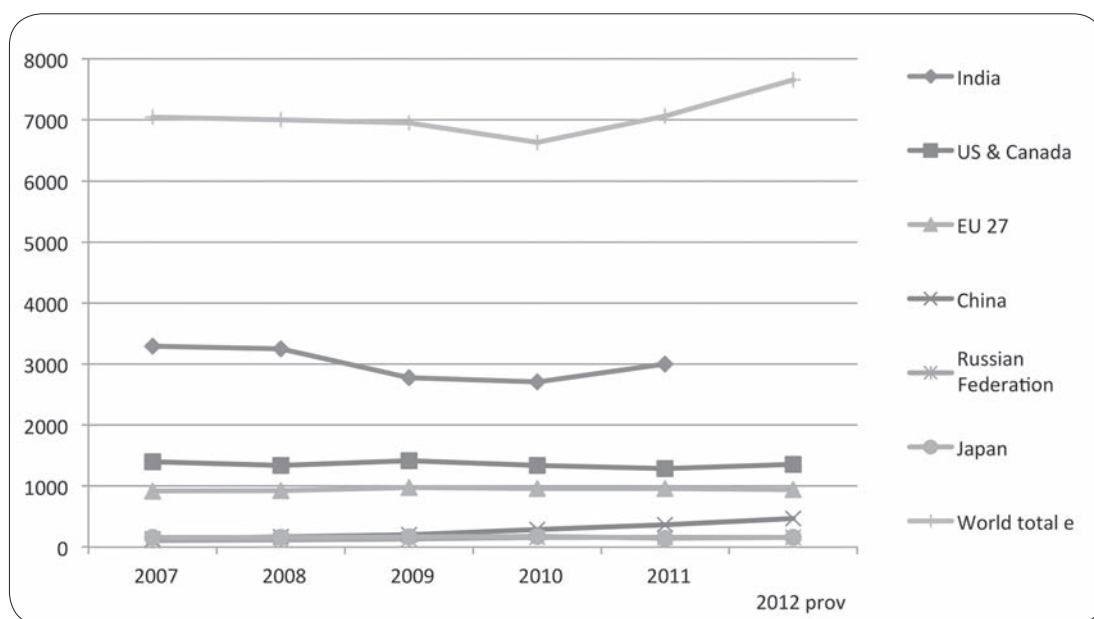
In units



Source: MEDIA Salles/ European Audiovisual Observatory

Cinema attendance in selected markets (2007-2012)

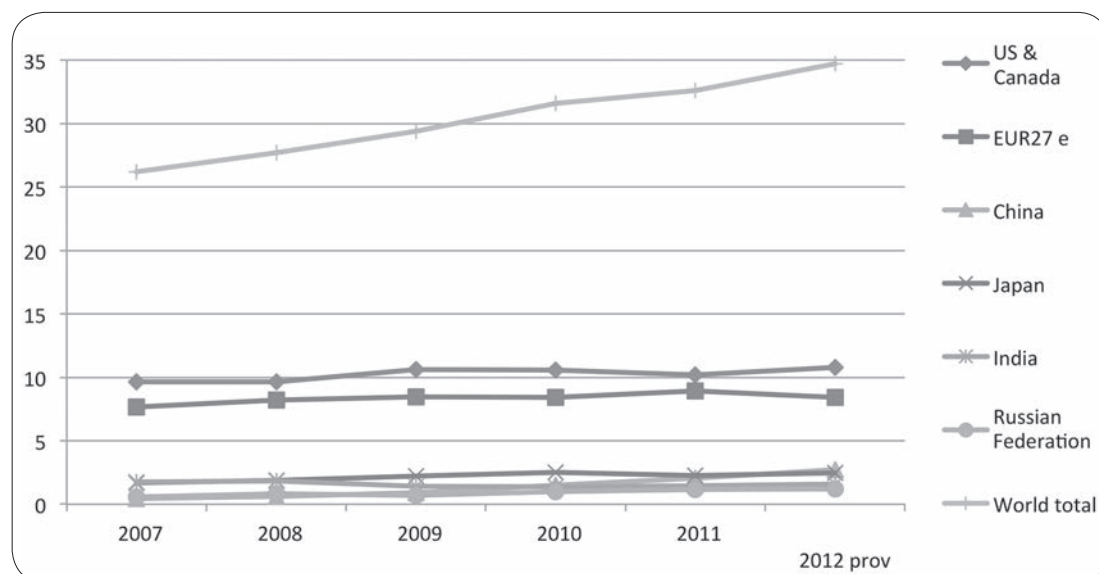
In million admissions



Sources: MPAA / OBS / Informa Media / Eiren / IHS Screen Digest / Russian Film Business Today

BO in selected markets (2007-2012)

In USD billion. Converted at average annual exchange rates.



Sources: OBS, MPAA, Rentrak, IHS Screen Digest



OBSERVATOIRE EUROPÉEN DE L'AUDIOVISUEL
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It is the task of the European Audiovisual Observatory to improve transparency in the audiovisual sector in Europe. It does this by collecting, processing and publishing up-to-date information about the various industries concerned.

The Observatory has adopted a pragmatic definition of the audiovisual sector in which it works. Its principal areas of interest are film, television, video/DVD, on-demand audiovisual media services and public policy on film and television. In these five areas, the Observatory provides information in the legal field as well as information about the markets and financing. As far as its geographical scope is concerned, the Observatory monitors, records and analyses developments in its member states. In addition, data on non-European countries is also made available when judged appropriate. The various stages involved in providing information include the systematic collection and processing of data as well as its final distribution to our users in the form of print publications, information on-line, databases and directories, and our contributions to conferences and workshops. The Observatory's work draws extensively on international and national information sources and their contributions of relevant information. The Observatory Information Network was established for this purpose. It is composed of partner organisations and institutions, professional information suppliers and selected correspondents. The Observatory's primary target groups are professionals working within the audiovisual sector: producers, distributors, exhibitors, broadcasters and other media service providers, international organisations in this field, decision-makers within the various public bodies responsible for the media, national and European legislators, journalists, researchers, lawyers, investors and consultants.

The European Audiovisual Observatory was established in December 1992 and is part of the Council of Europe thanks to its status as a "partial and enlarged agreement". Its offices are in Strasbourg, France. The Observatory's membership currently comprises 40 States and the European Union, which is represented by the European Commission. Each member appoints one representative to its board, the Executive Council. An Executive Director heads the international Observatory team.

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European Audiovisual Observatory

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